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71-1505

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

MAY 17 1972

MICHAEL RODAK, JR., CLERK

Case No. .....

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida; STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND; and STATE OF FLORIDA BOARD OF EDUCATION,
Petitioners,

vs.

AEROJET-GENERAL CORPORATION,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Case No. .....

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida; STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND; and STATE OF FLORIDA BOARD OF EDUCATION,
Petitioners,

vs.

AEROJET-GENERAL CORPORATION,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Petitioners, REUBIN O'DONOVAN ASKEW, Governor of the State of Florida; STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND; and STATE OF FLORIDA BOARD OF EDUCATION, pray that the Supreme Court of the United States issue its Writ of Certiorari directed to the United States Court of Appeals, Fifth Circuit, to review the following decisions, judgments and orders rendered by the United States Court of Appeals, Fifth Circuit, in the above entitled cause, (a) of December 9, 1971, to which petition for rehearing was denied on February 2, 1972, affirming judgment of the United States District Court for the Northern District of Florida, (b) of March 7,

1972, which denied the Petitioners motion to remand said cause to the United States District Court for the Northern District of Florida with leave to file a motion to set aside the judgment of the lower court for the reason set forth and contained in said motion.

OPINIONS DELIVERED IN COURTS BELOW

The United States District Court for the Northern District of Florida rendered its opinion and summary judgment in the case of Aerojet General Corporation, Plaintiff, v. Claude R. Kirk, Jr., Governor of the State of Florida, State of Florida Board of Trustees of the Internal Improvement Trust Fund and State of Florida Board of Education, Defendants, reported at 318 Fed. Supp. 55 (1970). This summary judgment was rendered on September 21, 1970, and granted specific performance of an option to purchase requiring the Defendants, the State of Florida, through the agencies named, to convey 25,313 acres of the State's public land to Aerojet General Corporation. A true copy of said opinion and judgment appears as "A" of the Appendix accompanying this petition.

On December 9, 1971, the United States Court of Appeals, Fifth Circuit, affirmed the summary judgment and summary decree granting specific performance, requiring the State agencies to convey the said public lands. The Petition for Rehearing and rehearing in banc were denied on. February 2, 1972. This opinion and judgment is reported at 453 F. 2d 819 and appears as "B" of the Appendix accompanying this petition.

The time for filing the petition for rehearing had been extended by the United States Court of Appeals, Fifth Circuit, until January 7, 1972. Prior to the expiration of the extended period the Petitioners filed in the United State Court of Appeals, Fifth Circuit, a "Motion to Re-

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mand the Cause With Leave to File Motion to Set Aside Judgment in the Lower Court." Said motion appears as "C" of the Appendix accompanying this petition. To this the Respondent filed an answer. This appears as "D" of the Appendix accompanying this petition.

On March 7, 1972, the United States Court of Appeals, Fifth Circuit, rendered its judgment or order in which it denied said motion. Said judgment, order and opinion appears as "E" of the Appendix accompanying this petition.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 and Rule 19 (b) of the Rules of the Supreme Court of the United States. The judgment and order complained of decides an important State question in a way in conflict with applicable State law. It also, in another aspect, involves controlling local law of the State of Florida upon which the appellate courts of Florida have not made a decision dealing with the statutory powers of the highest State officers, bearing upon the public policy and welfare of the State of Florida and its inhabitants.

The order refusing to permit the Petitioners to apply to the United States District Court to reopen the cause demonstrates a departure from the accepted and usual course of judicial proceedings to such an extent as to call for the exercise by the Supreme Court of the United States of its supervisory powers and the exercise of its discretionary certiorari powers.

QUESTIONS INVOLVED

A.

SHOULD THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT, RULE THAT A CONTRACT FOR THE SALE OF STATE LANDS BY A STATE AGENCY TO A PRIVATE INVESTOR UNDER A COMPULSORY, COMPETITIVE BIDDING STATUTE IS VALID, ABSENT "SPECIFIC CHARGES OF 'ACTUAL FRAUD, MISCONDUCT, FAVORITISM, PREJUDICE OR DISCRIMINATION'" EVEN THOUGH THE SPECIFICATIONS FOR BIDS WERE DRAWN IN SUCH A MANNER THAT (a) THEY PERMITTED ONLY ONE BIDDER TO QUALIFY AND (b) THEY MADE IMPOSSIBLE AN EXACT COMPARISON OF BIDS, WHICH UNDER STATE LAW RENDERS SAID CONTRACT VOID?

B.

SHOULD THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT, HAVE INITIALLY CONSIDERED AND INTERPRETED A STATE STATUTE OF FLORIDA, PRIOR TO A CONSIDERATION THEREOF BY THE COURTS OF THAT STATE WHICH INVOLVED THE STATUTORY POWER AND AUTHORITY OF STATE OFFICERS TO SELL AND TRANSFER PUBLIC LANDS BELONGING TO THE STATE WHERE THERE EXISTS A PROCEDURAL MACHINERY TO OBTAIN A RULING ON STATE LAW FROM THE STATE'S HIGHEST TRIBUNAL, ESPECIALLY WHERE SUCCEEDING EXECUTIVES OF THE STATE GOVERNMENT QUESTION THE STATUTORY POWER OF THE

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FORMER ADMINISTRATION TO GRANT A TEN-YEAR OPTION TO A PRIVATE INVESTOR TO PURCHASE 25,313 ACRES OF PUBLIC LAND?

C.

WAS THE ORDER OF THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT, DENYING THE PETITIONERS' MOTION TO REMAND WITH LEAVE TO MOVE TO VACATE THE DISTRICT COURT'S JUDGMENT A DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS TO SUCH AN EXTENT AS TO REQUIRE THE EXERCISE BY THIS COURT OF ITS SUPERVISORY POWERS?

STATEMENT OF THE CASE

The jurisdiction of the federal court was initially invoked because of diversity of citizenship.

The record in this case in the United States Court of Appeals, Fifth Circuit, was destroyed by fire. Upon stipulation of counsel, it was agreed that the cause would be submitted to the Court on appendices. Therefore, the appendices filed by the Petitioners and the Respondent in the lower court are made the record before the Supreme Court of the United States. In addition, there is appended and attached to the appendix to this petition the motion to remand the cause with leave to move to vacate the judgment in the District Court and the Respondent's response or answer to that motion together with the order rendered thereon. Three appendices were filed in the United States Court of Appeals, Fifth Circuit, constituting the record in that Court, as follows:

(1.) Appendix of Appellant Florida State Agencies filed in the lower court on January 15, 1971, hereinafter referred to as Record Vol. I.

(2.) Supplemental Appendix of Aerojet filed February 22, 1971, hereinafter referred to as Record Vol. II.

(3.) Aerojet's Appendix to its Supplemental Brief, filed in the lower court on May 5, 1971, hereinafter referred to as Record Vol. III.

On October 21, 1969, the Respondent Aerojet filed its complaint for specific performance against the members of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and the members of the State Board of Education, each of which is composed of the Governor and Cabinet of the State of Florida. In brief the complaint alleged that on the 21st day of December, 1961, Aerojet procured an option to purchase State owned lands contained in a written lease executed by the Trustees and the Board of Education. This was an "exclusive right, option and privilege to purchase all of the land", 25,313 acres, "at any time within the 10-year lease period at and for a price of $50.00 per acre." (Record Vol. I—pp. 1-4). The complaint sought a decree requiring the State officials to convey the State land for the option price.

The State officials filed an answer on December 1, 1969. (Record Vol. I—pp. 5-6). The answer averred that Aerojet had promised "the establishment of a manufacturing plant and facility to be used in production activities designed to strengthen the defense posture of the United States, which use of such public lands would serve the best interests of the people of the State of Florida", and that the State failed to comply with its agreement because the

option for "a nominal amount per acre was accepted by the defendant trustees and the members of the State Board of Education" on the faith of Aerojet's unfulfilled promise. Moreover, the answer averred it was "contrary to public policy, in that lands belonging to the people of the State of Florida are sought by the Plaintiff on the strength of an invalid agreement." The State admitted the execution of the lease option contract. It admitted that notice of the exercise of the option had been received by the State and it admitted that it had not served notice on the Respondent that it was in default under said contract. (Record Vol. I—pp. 6-12).

Briefly the lease option sued on (Record Vol. I—pp. 32-39) was a lease dated the 21st day of December, 1961, from the named agencies of the State of Florida to Aerojet leasing 25,313 acres of State public land for an annual rental of $2.50 per acre for a ten-year period. Aerojet covenanted within 12 months of the date of the lease to commence the construction and installation "of a manufacturing plant and associate facilities on said land or upon lands contiguous thereto owned, leased or controlled by the lessee (Aerojet) and in so doing to utilize the aforementioned described land in conjunction with the operation of such manufacturing plant and associated facilities."

The State officers granted to Aerojet "the exclusive right, option and privilege to purchase all of the land described herein at any time within the ten-year lease period at and for the price of $50.00 per acre." On the 14th day of January, 1963, by amendment, Aerojet was granted an extension of time until December 21, 1964, to commence the construction and installation of a manufacturing plant.

Motion for summary decree was made by Aerojet on January 20, 1970, and was granted on September 21, 1970, in which the District Court rendered its summary final judgment requiring the State agencies to specifically perform the option agreement and to convey the lands to Aerojet upon the payment of the purchase price. (Record Vol. I—pp. 13-32).

Prior to rendering summary judgment, the District Judge, on February 18, 1970, posed two questions to the litigants. First, did the Defendants (State officers) have the authority to dispose of public lands of Florida under the lease with option to purchase sued on by Aerojet. Second, was the notice published under the provisions of Florida Statute, Chapter 270.03 (Competitive Bidding Statute), sufficient to comply with the requirements of that statute. The former State officers conceded that they had the authority to enter into the option contract and that the notice for competitive bidding was legally sufficient. This of course is not binding on the Court or Petitioners (succeeding State officers). See *Swift & Co.* v. *Hocking Valley Railway Company*, 243 U.S. 281, 37 S.Ct. 287, 289; *Cory Corporation* v. *Sauber*, 284 F. 2d 767; *Economy Cash & Carry Cleaners, Inc.* v. *Coleman*, 128 Fla. 408, 174 So 829, 832; and *Massachusetts Bonding & Insurance Co.* v. *Bryant*, (1st DCA, Fla., 1965) 175 So 2d 89, 91.

An appeal was prosecuted by the State officers to the United States Court of Appeals, Fifth Circuit. Pending a disposition of said appeal, Honorable Reubin O'Donovan Askew was elected Governor of the State of Florida. Honorable Robert Shevin was elected the Attorney General of the State of Florida, Honorable Richard Stone was elected Secretary of State of the State of Florida, and Honorable Thomas O'Malley was elected State Treasurer of the State of Florida, all of whom, by virtue of their

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offices, became members of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and the State Board of Education of Florida and they constituted the majority of each such board and they assumed the duties of their offices on January 5, 1971.

After the case was set for oral argument by the United States Court of Appeals, Fifth Circuit, the new Attorney General asked for a postponement. This was granted. Thereafter he appointed a Special Assistant Attorney General to brief and argue the case on behalf of the State. The two paramount questions presented to the United States Court of Appeals, Fifth Circuit, were, first, whether the notice for competitive bids was sufficient to activate the power of the State officers to enter into a valid lease-option agreement covering the sale of public lands, and second, whether the State agencies possessed the statutory power to grant a ten-year option to purchase 25,313 acres of land at a price of $50.00 per acre.

The United States Court of Appeals, Fifth Circuit, on December 9, 1971, rendered its opinion and judgment answering both of these questions in the affirmative. (Appendix, pp. ~~A1-A23~~ A24-A61).

Prior to the expiration of the extended time for filing the petition for rehearing, Petitioners sought leave of the United States Court of Appeals, Fifth Circuit, to file in the District Court a motion for an order vacating the summary judgment. (Appendix, pp. A62-A72). The affirmance of the District Court's Judgment by the Court of Appeals prevented the District Court from entertaining such a motion unless and until the Court of Appeals, Fifth Circuit, granted permission.

This motion in brief set forth that for more than 100 years the State agencies involved had never granted an

option to purchase public lands. Prior to the time that Aerojet had procured the ten-year option from the State at a price of $50.00 per acre, Aerojet had entered into a lease option with Arvida Corporation. This covered 24,000 acres of land less valuable than the State's land. The option price was three and one-half times the option price of the State's land and the term was for five years, not ten years. The Arvida option and the price of the acreage fixed therein was not disclosed by Aerojet to the State at the time it procured the State option.

Also Aerojet had entered into several other options to purchase land approximating ten thousand acres of land less valuable than the State's land. These options were for six months and the price was three times the option price of the State's land. Aerojet actually exercised these options within the six months period, paying the price of $150.00 per acre; and, shortly thereafter, it procured the ten year option at the price of $50.00 per acre. Aerojet masked these other options by procuring them in the name of individuals not associated with Aerojet who assigned them to Aerojet after the State option was procured.

Aerojet's application for a lease and option on State lands was made on September 12, 1961, and its application actually fixed the terms and conditions under which it would contract and these terms and conditions were those contained in the notice of public bid and those terms and conditions favored Aerojet by making it the only potential bidder. (Record Vol. II—pp. 29-41).

This motion further asserted that Aerojet's representation that it needed the State lands for the purpose of establishing a manufacturing plant designed to strengthen the defense posture of the United States was

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inaccurate in that an entire township of 23,040 acres of State land included in the option was from nine to thirteen miles from the manufacturing plant and associate facilities of Aerojet.

Aerojet's covenant that it intended to use the State lands in conjunction with the operation of such manufacturing plant was wholly inapplicable to the 23,040 acres located at a great distance from the Aerojet plant.

The motion averred that Aerojet had contended in the District Court that it expended over $2,000,000.00 in improvements on State lands, yet by sworn petition of its manager, filed on July 20, 1968, in regard to ad valorem taxes, it attributed a value to the improvements made on the State lands of $77,134 and these improvements had been made on a 960 acre parcel of land contained in the State option located thirteen miles from the 23,040 acres which constituted the entire township of State lands.

Aerojet's representation that it needed the State land was inaccurate in that it had 45,000 acres of land under option to it, which it acquired, and the additional State land was not in fact needed for the operation of the project.

This motion was denied by the Court of Appeals, Fifth Circuit, on March 7, 1972.

Question A

SHOULD THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT, RULE THAT A CONTRACT FOR THE SALE OF STATE LANDS BY A STATE AGENCY TO A PRIVATE INVESTOR UNDER A COMPULSORY, COMPETITIVE BIDDING STATUTE AS VALID, ABSENT "SPECIFIC CHARGES OF 'ACTUAL FRAUD, MISCONDUCT, FAVORITISM, PREJUDICE OR DISCRIMINA-

TION'" EVEN THOUGH THE SPECIFICATIONS FOR BIDS WERE DRAWN IN SUCH A MANNER THAT (a) THEY PERMITTED ONLY ONE BIDDER TO QUALIFY AND (b) THEY MADE IMPOSSIBLE AN EXACT COMPARISON OF BIDS, WHICH UNDER STATE LAW RENDERS SAID CONTRACT VOID?

Reasons for Granting the Writ

Florida Statutes, Section 270.07, 270.08, and 270.09[1]

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1. 270.07 Certain public lands not to be sold without advertisement.—No lands in the state that are now, or may hereafter be, vested in the board of trustees of the internal improvement trust fund, or the state board of education shall decide or regard it conveyed or disposed of by the said board of trustees or by the said board of education until notice by publication shall have been given for the full term of thirty days prior to such sale; provided that this section shall not apply to homestead, railroad or canal grants, as now provided for by law nor to any conveyance pursuant to the provisions of §253.111.

History.—§1, ch. 5943, 1909; RGS 1222; CGL 1767; §1091, ch. 19355, 1939; CGL 1940 Supp. 892(410); §2, ch. 61-119; §2, ch. 65-324; §§27, 35, ch. 69-106.

270.08 Notice of sale of public lands by advertisement.—When the board of trustees of the internal improvement trust fund, or the state board of education shall decide or regard it expedient to sell any of the lands that are now, or may hereafter be, vested in the board of trustees of the internal improvement trust fund of the state, or in the state board of education, they shall give thirty days' notice of such sale, by publication in some newspaper published in the county or counties where such lands to be sold are situated, and also, such other papers as may be deemed advisable, once each week; which said notice shall contain a description of the lands, state the terms of sale, the time and place where such lands shall be sold, and notify the people that they will receive bids therefor at Tallahassee, from the time of giving such notice until the day of sale. In case said board of trustees is making the sale, it shall require the persons publishing said notice to file with it immediately after the expiration of the time of such sale, proof of said publication, which shall, at all times, be subject to inspection by any person desiring to see same. And in case the said state board of education is proceeding to make such sale, it shall likewise require such persons publishing said notice to file with it, immediately after the expiration of the time of said sale, proof of said publication, which shall at all times be subject to inspection by any person desiring to see same. None of the provisions of this section shall limit the applicability of §253.111.

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provide that the Board of Trustees of the Internal Improvement Trust Fund and the State Board of Education may not sell state lands unless and until there has been a compliance with the competitive bidding statute. It is an important State law that specifications under a competitive bidding statute governing public officers cannot be so vague as to "render impossible an exact comparison of bids" and if specifications are drawn "in such a manner as would permit only one bidder to qualify, this being such a reservation as would permit favoritism" and in

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History.—§2, ch. 5943, 1909; §1, ch. 6452, 1913; RGS 1223; CGL 1768; §1092, ch. 19355, 1939; CGL 1940 Supp. 892(411); §2, ch. 61-119; §3, ch. 65-324; §§27, 35, ch. 69-106. cf.—§1.01 Definition—person.

Ch. 50 Legal and official advertisements.

270.09 Bids to purchase public lands; sale to highest bidder; proviso, etc.—

(1) After the notice referred to in §270.07 shall have been issued, any persons shall have the privilege of filing with the board of trustees of the internal improvement trust fund, if it be making the sale, or with the state board of education, if it be making the sale, a bid or written proposition to purchase said lands; and same shall not be opened until the day of sale provided in said notice, at which time all bids shall be opened in the presence of the said board of trustees, if it be making the sale, or in the presence of the state board of education, if it be making the sale, at the office of the said board of trustees or the board of education making the sale, as the case may be, in Tallahassee, at which time any person so desiring may be present.

(2) The board of trustees, if it be making the sale, or the said state board of education, if it be making the sale, shall sell to the highest bidder, upon satisfactory terms, for cash or otherwise, as they may determine, the lands advertised as prescribed in §270.07, and shall make, execute and deliver a deed or deeds to the purchaser or purchasers of such lands, in the manner now provided by law and in accordance with the terms agreed upon.

(3) A record of all such sales and proceedings shall be kept by the said board of trustees, if it be making the sale, or by the said state board of education, if it be making the sale, which shall at all times be subject to inspection by any and all persons. All bids may be rejected if the price offered is not satisfactory to those making the sale. Sections 270.06-270.08 and this section shall not apply where the quantity of land sought to be sold does not exceed a half section of land.

History.—§3, ch. 5943, 1909; §1, ch. 6160, 1911; RGS 1224; CGL 1769; §1093, ch. 19355, 1939; CGL 1940 Supp. 892(412); §2, ch. 61-119; §§27, 35, ch. 69-106.

each instance bids made pursuant to such specifications are void. *Robinson's Inc.* v. *Arthur Short; Ray E. Green* v. *Arthur Short*, 146 So 2d 108 (Fla. Apps., 1st, 1962); *Mayes Printing Company* v. *J. A. Flowers*, 154 So 2d 859 (Fla. Apps. 1st, 1963); *Clark* v. *Nelson*, 82 Fla. 230, 89 So 495; and *Wester* v. *Belote*, 103 Fla. 976, 138 So 721.

The offer of September 12, 1961, of Aerojet to lease with option to purchase was submitted to the Trustees and the Board of Education and it outlined the conditions of the bid or proposal in such fashion that Aerojet would be the only possible bidder. (Record Vol. II—pp. 29-41). The notice of bids to be received for public sale published by the Trustees and the Board (Record Vol. II—pp. 51-54), contained specifications which qualified the bidders and the substance of the bid. One of the conditions of the bid was that the "Lessee-optionee (bidder) will be required by covenant to commence, within a reasonable period of time, construction and installation of a *manufacturing* plant and associated facilities on said land or upon lands contiguous thereto and owned, leased or controlled by lessee-optionee, and to utilize above described land for operation of its manufacturing plant and associated facilities. . ." (Record Vol. I—p. 42) ". . . Bidders may attach brief statement of nature of their intended operations for use of said lands. *A purpose of this offering is to motivate establishment of facilities and production in the interest of the economy of Florida and National defense.*" (Record Vol. I—p. 43)

The bid conditions did not include any plans or specifications of the manufacturing plant and associated facilities which were to be constructed. In fact not even a description of the project in terms of cost, magnitude or purpose was included in the terms and conditions governing the bid. (Record Vol. I—pp. 41-44)

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Under the Florida law such a condition destroys competitive bidding because (a) the specifications and conditions of the bid requiring the bidder to construct and install a manufacturing plant and associate facilities renders "impossible an exact comparison of bids", *Robinson's Inc.* v. *Arthur Short, supra,* and *Mayes Printing Company* v. *J. A. Flowers, supra,* and (b) the conditions of the bid are tailored to fit only Aerojet which is in fact unlawful favoritism. *Robinson's Inc.* v. *Arthur Short, supra,* and *Mayes Printing Company* v. *J. A. Flowers, supra.* Aerojet was the only industrial company that had procured a contract with the Federal Government to construct a plant and manufacturing facilities to devise, create and test a solid fuel propellent for rockets. Consequently, it was the only bidder and indeed could be the only bidder. It is clear that the opinion and decision of the United States Court of Appeals, Fifth Circuit, conflicts with these important established rules of Florida law.

Question B

SHOULD THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT, HAVE INITIALLY CONSIDERED AND INTERPRETED A STATE STATUTE OF FLORIDA, PRIOR TO A CONSIDERATION THEREOF BY THE COURTS OF THAT STATE WHICH INVOLVED THE STATUTORY POWER AND AUTHORITY OF STATE OFFICERS TO SELL AND TRANSFER PUBLIC LANDS BELONGING TO THE STATE WHERE THERE EXISTS A PROCEDURAL MACHINERY TO OBTAIN A RULING ON STATE LAW FROM THE STATE'S HIGHEST TRIBUNAL, ESPECIALLY WHERE THE SUCCEEDING STATE ADMINISTRATION QUESTIONS THE STATUTORY POWER OF A FORMER ADMINISTRATION TO GRANT A TEN-YEAR OPTION TO A

PRIVATE INVESTOR TO PURCHASE 25,313 ACRES OF PUBLIC LAND?

Reasons for Granting the Writ

The statutory powers of the Trustees of the Internal Improvement Trust Fund are fixed by Florida Statutes, Section 253.02.[2] Public lands are held by the Trustees "in trust for the uses and purposes provided in this chapter with the power to sell and transfer said lands to purchasers and receive payment for same." The power granted to a Trustee to sell and transfer, whether granted statutorily,

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2. 253.02 Board of trustees; powers and duties.—

(1) For the purpose of assuring the proper application of the internal improvement trust fund for the purposes of this chapter, the land provided for in §§253.01 and 253.03, and all the funds arising from the sale thereof, after paying the necessary expense of selection, management and sale, are irrevocably vested in a board of seven trustees, to wit: The governor, the secretary of state, the attorney general, the comptroller, the state treasurer, the commissioner of education, the commissioner of agriculture and their successors in office, to hold the same in trust for the uses and purposes provided in this chapter, with the power to sell and transfer said lands to the purchasers and receive payment for the same, and invest the surplus moneys arising therefrom, from time to time, in stocks of the United States, stocks of the several states, or the internal improvement bonds issued under the provisions of law; also, the surplus interest accruing from such investments. Said board of trustees have all the rights, powers, property, claims, remedies, actions, suits and things whatsoever belonging to them, or appertaining before and at the time of the enactment hereof, and they shall remain subject to and pay, fulfill, perform and discharge all debts, duties and obligations of their trust, existing at the time of the enactment hereof or provided in this chapter.

.(2) The board of trustees shall not sell, transfer or otherwise dispose of any lands the title to which is vested in the board of trustees except by vote of at least five of the seven trustees.

(3) In the event submerged tidal land is to be sold and transferred by said board of trustees, the board of trustees shall first require the department of natural resources to inspect said lands and to file a written report with the board of trustees which report shall state whether or not the development of said lands would be detrimental to established conservation practices.

History.—§2, ch. 610, 1854; RS 429; GS 617; RGS 1055; CGL 1385, §2, ch. 61-119; §1, ch. 67-5; §1, ch. 67-269; §1, ch. 67-2236; §§25, 27, 35, ch. 69-106; §1, ch. 69-300.

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contractually, or testamentarily, does not carry with it the power to grant an option to purchase for a ten-year period. The authorities seem to be in unison on this point.[3]

The Supreme Court of Florida in the case of *South Inv. Corp. et al.* v. *Norton*, 57 So 2d 1, held that an option contract "is not a contract of sale within any definition of the term." The Supreme Court of Florida in the case of *Watson* v. *Holland*, 155 Fla. 342, 29 So 2d 388, indicates that the power of the Trustees to sell under Florida Statutes 270.07 and 270.08, contemplates the sale of the fee simple title to land. However, there is no case in Florida which passes upon this precise question of whether the Trustees of the Internal Improvement Trust Fund and the Board of Education have the power to grant a ten-year option for the purchase and sale of State lands, although the rule elsewhere denies the power, for the reason that it is the duty of the Trustees to exercise their judgment and discretion in the sale of public property, with respect to the adequacy of the price, at the time of the exercise of the power to sell; thus prohibiting the granting of an option to purchase ten (10) years in the future at a price fixed ten years before and thereby illegally tying the hands of future State administrations to the sale of public property at unreasonable prices.

In view of this important State question, we urge that the decision of the Supreme Court of the United States in the case of *United Gas Pipe Line Co.* v. *Ideal Cement Co.*, 369 U.S. 134, 82 S.Ct. 676 (1962) is particularly applicable. In that case it was held:

"The interpretation of state law by the Court of Appeals, in an opinion by its Alabama member, was ren-

3. *Potter County* v. *C. C. Slaughter Cattle Co.*, (Texas Apps.) 254 S.W. 775, and *Adler* v. *Adler*, 216 Ga. 553, 118 S.E. 2d 456, and authorities therein cited.

dered in advance of construction of the License Code by the courts of the state, which alone, of course, can define its authoritative meaning. We ought not, certainly on this record, either accept the Court of Appeals' construction or, on an independent consideration, reject what the Alabama Supreme Court may later definitively approve. The availability of appropriate declaratory-judgment proceedings under Ala. Code, Tit. 7, par. 156-168 (1940), avoids this unsatisfactory dilemma. Wise judicial administration in this cause counsels that decision of the federal quesion be deferred until the potentially controlling state-law issue is authoritatively put to rest. See Leiter Minerals, Inc. v. United States, 352 U.S. 220, 228, 229, 77 S.Ct. 287, 1 L.Ed. 2d 267. Accordingly, the judgment of the Court of Appeals is vacated to permit a construction of the License Code of the City of Mobile, so far as relevant to this litigation, to be sought with every expedition in the state courts. It is so ordered. * * *"

The Supreme Court of the United States in the case of *Clay* v. *Sun Insurance Office Limited*, 363 U.S. 207, 80 S.Ct. 1222 (1960) suggests that the judgment of the United States Court of Appeals, Fifth Circuit, should be vacated in this cause and referred to the Supreme Court of Florida to obtain its interpretation of the powers of the Trustees of the Internal Improvement Trust Fund and the Board of Education, with respect to whether they possess the statutory power to grant options to purchase the public lands held by them in trust.

Question C

WAS THE ORDER OF THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT, DENYING THE PETITIONERS' MOTION TO REMAND WITH LEAVE TO MOVE TO VACATE THE DISTRICT COURT'S JUDGMENT A DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS TO SUCH AN EXTENT AS TO REQUIRE THE EXERCISE BY THIS COURT OF ITS SUPERVISORY POWERS?

Reasons for Granting the Writ

Initial jurisdiction in the District Court was invoked on the basis of diversity of citizenship. This is, therefore, an "Erie case." It was disposed of on summary judgment without a trial and without an investigation into the facts surrounding the execution of the contract and the option to purchase. In Florida, "specific performance of a contract for the sale of land is not a matter of right but 'rests in the sound, reasonable discretion of a court of equity'." *Manning* v. *Mentone Corp.*, 99 So 2d 223, (Fla.). Therefore, a summary final decree should not be granted if things "touching the sound discretion of the Chancellor" are present. Under such circumstances in Florida "the ends of justice will best be served by the trial of the cause on its merits rather than a disposition on the pleadings." *Manning* v. *Mentone Corp., supra.* As pointed out by the United States Court of Appeals, Fifth Circuit, in *Weeks* v. *Pratt*, 43 F. 2d 53, 57, "it is fundamental that equity will not lend its aid to the enforcement of a contract unless it is fair, equal and just and based upon adequate consideration." A contract for the purchase of land will not be enforced if the contract is based on "manifestly inadequate consideration, the enforcement of which would be inequit-

able and unjust." *Gaskins et al.* v. *Byrd*, 66 Fla. 432, 62 So 824. In the case of *Clarke* v. *Aiken*, 276 Fed. 21 (U.S. Court of Appeals, Fifth Circuit), it is held:

> "A court of equity exercises a discretion in determining whether the relief of specific performance should be granted or withheld, and the relief may be withheld when the granting of it may produce hardship or injustice to either of the parties."

In the case of *Seaboard Air Line Ry. Co.* v. *Atlanta, B. & C. R. Co.*, 35 F. 2d 609, 610, Court of Appeals, Fifth Circuit, it is stated:

> "In the exercise of its discretion, a court of equity may refuse specific enforcement of a valid contract where, by granting that relief, a paramount public interest will or may be interfered with."

In *Busch* v. *Baker*, 79 Fla. 113, 83 So 704, 705, the Supreme Court of Florida held:

> "Misrepresentation or concealment is not required to go to the extent of actionable fraud in order to justify a chancellor, in his discretion, in refusing to grant specific performance of a contract induced thereby."

The fact that Aerojet contracted with Arvida for a lease with an option to purchase in five years for lands less desirable than the State lands at approximately $175.00 per acre while it was bidding only $50 an acre for the State land is not actionable fraud. The act of Aerojet in concealing from the public and from the State officials the price and terms of its option to purchase the Arvida land at the time it bid the $50 for a ten-year option for the State land is not actionable fraud. It does, however, establish that Aerojet was conscious of the fact that its bid price

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was unfair, unconscionable and inequitable. The fact that Aerojet took options to purchase on less desirable land than the State land for a term of only six months at a price of $150 per acre and exercised the option whereas its bid to the State was $50 an acre for an option term of ten years is not actionable fraud. However, the act of masking from the public and from the State the actual price and terms of the six months options at the time of the bid for the public lands indicates the conscious knowledge of Aerojet that the bid terms were grossly unfair and inequitable. The fact that Aerojet in its complaint contended it had invested over $2,000,000 in construction on the State lands which was one of the equities found by the District Court to be in its favor, loses much of its appeal to equity's conscience when it in fact appears that in 1968 Aerojet placed a valuation on these improvements of less than 10 per cent of that amount in its sworn application for a reduction of its ad valorem taxes.

The representation of Aerojet that its activities would strengthen the defense posture of the United States, through the utilization of State land, constituted an appeal to the patriotism of the State officers and the public in Florida when in truth it is clear from an examination of the map attached to the motion to re-open the summary judgment that 23,040 acres of the State's land was in no wise to be utilized to strengthen the defense posture of the United States. These and the other facts alleged in the motion should have impelled the United States Court of Appeals, Fifth Circuit, to grant permission to the State officials to present these facts to the trial Court upon a motion to vacate the summary judgment. The denial of this motion by the United States Court of Appeals, Fifth Circuit, is a departure from the accepted and usual course of judicial proceedings to such an extent as to require the

exercise by the Supreme Court of the United States of its supervisory powers remanding this case back to the District Court so that "the ends of justice will be best served by a trial of the cause on its merits" rather than a summary disposition thereof.

CONCLUSION

For the foregoing reasons, we respectfully suggest that the Writ of Certiorari should issue directed to the United States Court of Appeals, Fifth Circuit.

Respectfully submitted,

ROBERT SHEVIN

Attorney General of the State of Florida, Counsel for the State of Florida Board of Trustees of the Internal Improvement Trust Fund, and Counsel for the State of Florida, Board of Education, Petitioners
The Capitol
Tallahassee, Florida 32304

MARION E. SIBLEY

Special Assistant Attorney General, Appointed to Appear for the Petitioners Solely in This Cause
605 Lincoln Road
Miami Beach, Florida 33139

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CERTIFICATE OF SERVICE

THE UNDERSIGNED CERTIFIES that a true and correct copy of the above and foregoing "Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit" was furnished by mail to George W. Wright, Jr., Esq., Attorney for Respondent, 1600 First National Bank Building, Miami, Florida 33131 on this 16th day of May, 1972.

.....

APPENDIX "A"

AEROJET-GENERAL CORPORATION,
an Ohio corporation, Plaintiff,

v.

Claude R. KIRK, Jr., Governor, et al.,
Defendants.
Civ. A. No. 1534.
United States District Court,
N. D. Florida,
Tallahassee Division.
Sept. 21, 1970.

Action by private corporation for specific performance of purchase option granted to it in lease of Florida public lands, vested in trustees of internal improvement trust fund and State Board of Education. On motions of lessee-corporation for summary judgment and of the state agencies to dismiss, the District Court, Middlebrooks, J., held inter alia, that, though lease provided for construction of manufacturing plant by lessee-corporation, cessation of operations of the manufacturing plant did not constitute failure of consideration, precluding exercise of the option, where lessee had paid the specified annual rental and amounts in lieu of ad valorem taxes, and had exercised the option, becoming obligated to pay the purchase price, before the state agencies asserted the alleged failure.

Summary judgment granted; motion to dismiss denied.

1. **Public Lands (Key) 147½**

Lease-option with respect to Florida public lands, vested in the trustees of the internal improvement trust fund and in the State Board of Education, fairly and properly reflected and contained the terms and provisions enumerated in the published notice, despite minor varia-

tions inuring to the benefit of the state agencies or providing contractual formula to effect condition of notice with respect to termination. F.S.A. §§ 270.07-270.09.

2. Public Lands (Key) 147½

Where lease of Florida public lands, vested in trustees of internal improvement trust fund and in state board of education, to private corporation for construction of manufacturing plant, with option to purchase, was amended to grant lessee corporation additional time for construction and installation of the plant, republication by the state agencies was not required. F.S.A. §§ 270.07-270.09.

3. States (Key) 84

Florida state agencies enjoy no privileged status affecting their contractual rights and liabilities, and the same legal rules and principles apply to and govern the rights of such agencies and the rights of private persons under a contract.

4. Contracts (Key) 57

Mutually enforceable promises may constitute valid consideration for each other.

5. Public Lands (Key) 147½

Lease of Florida public lands to private corporation with option to purchase, which provided for payment by corporation of annual rental, payments in lieu of taxes and, upon exercise of option, purchase price, together with construction of manufacturing plant by corporation, was supported by legal consideration.

6. Public Lands (Key) 147½

Under lease of Florida public lands, vested in trustees of internal improvement trust fund and in State Board of Education, to private corporation for construction of manufacturing plant, with option to purchase, cessation of operations of the manufacturing plant did not constitute failure of consideration precluding exercise of option, where lessee-corporation had paid each year when due the annual rental and payments in lieu of ad valorem taxes, and where lessee had become obligated to pay the purchase price by exercise of the option prior to assertion of the alleged failure.

7. Vendor and Purchaser (Key) 18(1)

"Option contract" is not contract of sale but is unilateral contract which gives option holder the right to purchase under the terms and conditions of the option agreement.

See publication Words and Phrases for other judicial constructions and definitions.

8. Public Lands (Key) 147½

Under lease of Florida public lands, vested in trustees of internal improvement trust fund and State Board of Education, to private corporation for construction of manufacturing plant, with option to purchase, which provided that lease should terminate upon exercise of the option that no covenant therein should extend beyond such termination except covenant not to use the land for speculative purposes, and which provided for giving of notice by the state agencies of any alleged breach, cessation of operations of manufacturing plant, which the state agencies did not assert as breach prior to exercise of option, did not constitute breach of condition precedent to exercise of option.

9. Public Lands (Key) 147½

Under lease of Florida public lands, vested in trustees of internal improvement trust fund and State Board of Education, to private corporation, with option to purchase, which provided that upon exercise of option the lease should terminate and that no covenant therein (with one exception) should extend beyond such termination, and which provided for notice of any alleged default, the state agencies could not, under theory that time is the essence or otherwise, after exercise of the option to purchase, validly avoid the option by then asserting for the first time prior alleged breach of a covenant of the lease.

10. Vendor and Purchaser (Key) 18(3)

Time is of the essence of option contract in that the term of the option limits the optionee's right to exercise.

11. Vendor and Purchaser (Key) 18(3)

Where one holds option based on valid consideration to purchase real estate and desires to exercise the option, he must definitely accept the proposition by notifying the vendor of such decision within the time specified, and on the terms named.

12. Vendor and Purchaser (Key) 18(3)

When option to buy land is definitely accepted, it ceases to be an option and ripens into mutually binding and enforceable contract, the terms of which are identical to those contained in the option.

13. Specific Performance (Key) 97(1)

Under lease of real estate with option to purchase, which provided that not less than 20% of the purchase price became due and payable upon execution of contract to purchase, after exercise of option, it was not necessary

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that optionee tender actual payment of that sum in order to bring action for specific performance, and it sufficed that optionee advised vendor and the court that it was ready, willing and able to perform its contractual obligations.

14. Specific Performance (Key) 57

Under lease of Florida public lands to private corporation for construction of manufacturing plant, with option to purchase, defense of failure of inducement was insufficient in action by corporation for specific performance of the option agreement, when corporation exercised the option after having paid agreed rentals and payments in lieu of taxes, but after the manufacturing plant had suspended operations.

15. Contracts (Key) 108(1)

Contract is not void as against public policy unless it is injurious to the interests of the public or contravenes some established interest of society, and thus contracts are not void as contrary to public policy unless they are either agreements to effect some unlawful or socially repugnant end, or agreements to effect some lawful end by unlawful or socially repugnant means.

16. Public Lands (Key) 147½

Lease of 25,313 acres of Florida public lands at annual rental of $2.50 per acre, together with amount in lieu of ad valorem taxes, to private corporation for construction of manufacturing plant, with option in corporation to purchase at price of $50 per acre, entered into by trustees of internal improvement trust fund and by State Board of Education pursuant to legislative authority, was not contrary to public policy. F.S.A. §§ 229.08, 253.02, 253.18, 270.01 et seq.

17. Specific Performance (Key) 29(2), 30

Essential provisions of contract for sale of land, so that it may be specifically enforced, are that the property and the interest therein to be conveyed is definitely described, that the purchase price is definite and specific, and that the time and terms of payment of the purchase price are definite, and provision of alternate terms for payment of purchase price does not preclude specific enforcement.

18. Specific Performance (Key) 28(2)

For purposes of specific performance of contract for sale of land, absolute certainty or definiteness is not required with respect to nonessential elements of the contract, and such may be reduced to certainty by legal rules and presumptions.

Karl B. Block, Jr., Mershon, Sawyer, Johnston, Dunwody & Cole, Miami, Fla., for plaintiff.

Phillip S. Bennett, Gen. Counsel, Board of Trustees of the Internal Improvement Trust Fund.

Rivers Buford, Jr., Gen. Counsel, State of Florida Board of Education, Tallahassee, Fla., for defendants.

SUMMARY FINAL JUDGMENT FOR PLAINTIFF AND ORDER ON MOTIONS

MIDDLEBROOKS, District Judge.

The above cause initially came on for hearing before the Court on February 18, 1970, upon plaintiff's Motion for Summary Judgment, plaintiff's Motion to Strike certain defenses contained in the Answer of the defendants, and defendants' Motion to Dismiss the Complaint, the latter motion having been filed by the defendants

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along with their Answer to the Complaint. Prior thereto memorandum briefs had been submitted by plaintiff and defendants in support of their respective motions. At the conclusion of said hearing, the Court requested counsel for plaintiff and defendants to submit additional memoranda of law, and reply memoranda of law upon certain questions the Court raised. Such additional memoranda and reply memoranda were filed and thoroughly considered by the Court. Further oral argument was held before the Court on August 28, 1970, upon the aforesaid motions. The Court having now considered all of said pending motions as well as the pleadings, affidavits, admissions and exhibits on file with the Court and the concessions made by counsel for defendants in oral argument before the Court, is of the opinion and finds that there is no genuine issue of material fact to tried in this cause and that the plaintiff is entitled to the entry of summary final judgment in its favor as a matter of law and grants the relief sought and prayed for by the plaintiff in its Complaint. The Court makes the following specific findings of undisputed material fact and conclusions of law:

FINDINGS OF UNDISPUTED MATERIAL FACT

[1] The plaintiff is and was at the time of filing of its Complaint herein a corporation duly incorporated, organized and existing under the laws of the State of Ohio, with its principal offices and place of business in a state other than Florida. The defendants[1] are the present constituent members of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida

1. The defendants, members of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and their predecessors in office will be hereinafter referred to as the "Trustees". The defendants, members of the State Board of Education of the State of Florida, will be hereinafter referred to as the "Board of Education".

(successors in office to the Trustees of the Internal Improvement Fund of the State of Florida), and the State Board of Education of Florida, both component state agencies of the State of Florida. They are and were at the time of the filing of plaintiff's complaint herein, citizens of the State of Florida and residents of Leon County, Florida. The matter in controversy herein exceeds the sum of $10,000.00, exclusive of interest and costs.

[2] On December 21, 1961, plaintiff and the Trustees and Board of Education of Florida executed and entered into a Lease With Option To Purchase (Exhibit A to the complaint—hereinafter referred to as "Lease-Option" or "contract"). The Lease-Option recited satisfaction of all statutory requirements, performance of all prerequisites to execution of the Lease-Option, and the authority of the Trustees and Board of Education to enter into and execute the Lease-Option. The Trustees and Board of Education by that instrument leased to plaintiff approximately 25,313 acres of specifically described real estate located in Dade County, Florida, for ten years. The defendants owned fee title to the land in their respective official capacities.

[3] Among the covenants of the plaintiff under the Lease-Option was its agreement: (i) to pay an annual rental in advance commencing on the date of execution of the Lease-Option and continuing on the anniversary date thereof each year thereafter in the sum of $2.50 per acre, (ii) to pay annually to the appropriate local governmental agencies a sum of money equal to, but in lieu of, the amount of ad valorem real estate taxes which would be due and payable on the leased lands if title thereto were owned in fee by the plaintiff, together with any valid special assessments levied upon the property (hereinafter referred to as "in lieu taxes") which in lieu taxes would be paid during the lease period or until purchase of the property

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by plaintiff was effectuated under the option to purchase granted it therein, and (iii) to commence within twelve months after the date of execution of the Lease-Option construction and installation of a manufacturing plant and associated facilities upon the leased lands or upon lands contiguous thereto owned, leased or controlled by plaintiff and in so doing to utilize the leased lands in conjunction with the operation of such manufacturing plant and associated facilities.

[4] Under paragraph 8 of the Lease-Option, the Trustees and Board of Education granted to the plaintiff the exclusive right, option and privilege to purchase all of the lands described therein "at any time within the ten (10) year lease period" for a price of $50.00 per acre, the purchase price to be determined by the number of acres multiplied by $50.00, less the amount of any unearned rent paid by the plaintiff under the lease. No specific mode or manner of exercise of said option to purchase was specified in the Lease-Option. The option to purchase allowed plaintiff an election to pay the total amount of the purchase price simultaneously with delivery to it of a deed to the property vesting good and merchantable fee simple title thereto in the plaintiff, or to pay any amount up to or in excess of 20% of the total purchase price simultaneously with the execution of a "contract to purchase" between the parties. Under said contract to purchase, a promissory note would be given by plaintiff to defendants in the amount of the unpaid balance, due and payable in ten equal, consecutive, annual installments with interest on the unpaid balance at the rate of 5% per annum. Plaintiff was granted the right to pre-pay the unpaid balance without penalty at any time, in which event the Trustees and the Board of Education would deliver to plaintiff a deed to the subject lands vesting good and merchantable fee simple title thereto in the plaintiff. Neither the Lease-Option nor the Notice of Bids

and Public Sale, pursuant to which the Lease-Option was executed, contained any condition precedent to the plaintiff's exercise of the option to purchase, save its exercise during the ten-year lease period and the payment by plaintiff of the purchase price. Specifically, the Lease-Option did not contain any term, covenant or condition that plaintiff not have breached, or not be in default in the performance of any lease covenant, or that the lease be in good standing as a condition to its exercise of the option to purchase.

[5] The Lease-Option specifically provided that, upon plaintiff's exercise of the purchase option, all covenants of the lease agreement would cease, except that contained in paragraph 5, prohibiting plaintiff, except with defendants' permission, from using the property for "purposes of land speculation in any manner whatsoever" for a period of ten years next following execution of the Lease-Option.

[6] The Lease-Option specifically granted the Trustees and Board of Education the "right to cancel" the lease upon breach of or failure of plaintiff to comply with any of the lease covenants; but only after the Trustees and the Board of Education gave plaintiff sixty days prior written notice of their intention to cancel the lease for such breach of covenant, during which period plaintiff had the right to cure such alleged breach or failure to comply with any of the lease covenants.

[7] Prior to execution of the Lease-Option, to-wit: On September 21 and 28 and October 5, 12 and 19, 1961, a Notice of Bids and Public Sale (Exhibit 1 to plaintiff's Request for Admissions of Fact—hereinafter referred to as the "Notice") was duly published in the Homestead News, a newspaper of general circulation in Dade County, Florida, in its editions of those dates, in compliance with and as provided for in Sections 270.07-270.09, Florida Statutes,

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1961, F.S.A., and a Proof of Publication thereof (Exhibit I to plaintiff's Request for Admissions of Fact) was duly executed by said newspaper and filed with the Trustees and Board of Education.

[1] [8] On the day and in the manner specified by said Notice, plaintiff submitted the high bid on the Lease-Option offering. The parties thereafter executed and entered into a written Lease-Option agreement, the terms of which were essentially identical to the terms enumerated in said public Notice. There were minor and insignificant differences in the Notice terms and in the Lease-Option terms. The Lease-Option reserved to defendants the right to cancel the Lease-Option upon sixty days' prior written notice for the alleged breach of "any" lease covenant. The Notice prescribed cancellation rights only in the event of breach of the covenant contained in paragraph 3 of the Lease-Option. This modification of terms inured to defendants' benefit. Also, the Lease-Option contained a specific procedure to be utilized by defendants in the event they sought to terminate the contract for an alleged breach by plaintiff. A sixty-day notice of default, with opportunity to cure, was the contractual formula implemented to effect the condition in the Notice that under certain circumstances defendants could in their "discretion" terminate the Lease-Option.

Notwithstanding these minor variations, the Court finds that the terms of the Notice and of the Lease-Option were identical in substance, and that the contract here sought to be specifically enforced fairly and properly reflects and contains the terms and provisions enumerated in the Notice.

[9] On January 14, 1963, plaintiff and the Trustees and Board of Education entered into an Amendment to Paragraph Three of Lease With Option to Purchase (here-

inafter referred to as "Amendment to Lease-Option"). The Amendment to Lease-Option acknowledged the expenditure by plaintiff of "considerable funds in order to commence the actual building construction and installation" of the manufacturing plant and associated facilities provided for by paragraph 3 of the Lease-Option, including extensive grading and foundation work, and further acknowledged, in essence, a "question" as to whether there had been compliance with paragraph 3 of said Lease-Option. The Amendment to Lease-Option, "in order to eliminate" any such "question", and acknowledging "that it would best serve the interests of all parties to the Agreement as well as the public interests" to grant additional time to plaintiff for commencement of construction and installation of such manufacturing plant and associated facilities, amended paragraph 3 of the Lease-Option so as to provide for commencement of such construction and installation prior to December 21, 1964. All other terms and covenants of the Lease-Option were unaffected; and they remained in full force and effect.

[10] From and since December 21, 1961, (the date of execution of the Lease-Option), plaintiff timely paid to the Trustees and Board of Education, who received and accepted from the plaintiff all annual rentals and in lieu taxes required to be paid by the plaintiff under the Lease-Option.

[11] Plaintiff on September 8, 1969, mailed to the Trustees and Board of Education, by certified mail, return receipt requested, a written notice bearing the same date to said parties that the plaintiff was thereby exercising its option to purchase all of the subject lands under and pursuant to the provisions of paragraph 8(b) of the Lease-Option, electing to pay, as provided for therein, 20% of the total purchase price, less any unearned rent from date of

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closing, in cash in exchange for the simultaneous execution of the contract to purchase provided for. The plaintiff expressly waived in said notice its right to have the actual acreage determined by a survey and elected to purchase the property as containing 25,313 acres, as permitted by the Lease-Option provisions. Plaintiff advised the Trustees and the Board of Education that it was and stood ready, willing and able to pay the required amount of the purchase price and to execute said contract to purchase simultaneously with the execution by the Trustees and the Board of Education of said contract to purchase. The written notice of the exercise of the option to purchase was received by the defendants (Trustees and Board of Education) on September 10, 1969. At no time prior to the receipt of said notice of exercise of the option to purchase by them, did defendants or any of them ever deny their authority to enter into and perform under the Lease-Option nor did defendants ever advise the plaintiff or give plaintiff any written notice of any alleged breach by the plaintiff of, or its alleged failure to comply with, any of the covenants contained in the Lease-Option. Neither the Trustees nor the Board of Education ever gave any notice of intention to cancel or of the actual cancellation of said Lease-Option during that time. Nevertheless both the Trustees and Board of Education thereafter advised plaintiff that they would neither accept the required amount of the purchase price nor execute the contract of purchase. Defendants have since failed and refused to do so. At a meeting conducted by the defendants on October 21, 1969 (over a month after plaintiff's exercise of its option to purchase the subject lands), defendants averred for the first time that the plaintiff had not performed all of the lease covenants. Notwithstanding the express requirements as to method of termination of the Lease-Option above referred to, a majority of the defendants voted at

that meeting to "void" the Lease-Option. Defendants for the first time on October 21, 1969, advised plaintiff that an alleged breach of paragraph 3 of the Lease-Option existed, because plaintiff's manufacturing plant (dedicated to processing large solid fuel rockets under government contracts) had to become inactive in June of 1967, although the plant was continued to be maintained in a useful condition. (See Exhibit II, Plaintiff's Request for Admissions of Fact.) In sum, defendants were then, for the first time informing plaintiff that it had lost its right to exercise its option to purchase by reason of an alleged breach of lease covenant prior to the exercise of its option to purchase.

CONCLUSIONS OF LAW

[1] The Court has jurisdiction of the cause and the parties. 28 U.S.C. § 1332. The Lease-Option was made and was to be performed in Florida; and it is undisputed that the Court must ascertain and apply the substantive law of Florida in this case, under the doctrine of Erie R. Co. v. Tompkins, 1938, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188.

[2] Procedurally, the case is before the Court on defendants' Motion to Dismiss Plaintiff's Complaint and Plaintiff's Motion to Strike Affirmative Defenses and for Summary Final Judgment. The material facts have been stipulated to or admitted by defendants and the issues on both the motion to dismiss and motion for summary judgment are issues solely of law. The Court finds that plaintiff is entitled to summary final judgment; and so it is unnecessary to rule on Plaintiff's Motion to Strike.

[3] The Court has imposed on itself and counsel the duty to ascertain and apply to these facts the available case law on the issues herein, to the end that the interests and rights of the people of Florida and the parties litigant are

properly protected. Though Florida case law is not abundant on the issues here presented, it is sufficient to guide this Court to its decision. Resort need not be had to foreign law, although it is equally corroborative of the Court's conclusions here.

[4] It is conceded by defendants that the Trustees and the Board of Education have complete authority and discretion to convey and dispose of lands held by them in such manner as in their judgment may be most advantageous. (See, Florida Statutes, §§ 253.18, 253.02, 229.08, 270.07 and 270.09, F.S.A.; Trustees of Internal Improvement v. Root, 1912, 63 Fla. 666, 58 So. 371; Everglades Sugar & Land Co. v. Bryan, 1921, 81 Fla. 75, 87 So. 68; Defendants' Reply Memorandum, p. 8.)

[2] [5] Defendants have likewise conceded that the notice provisions contained in Chapter 270, Florida Statutes, F.S.A., were followed; and there is no bar to plaintiff's claim arising out of the requirements of those statutes. That is, it is conceded that defendants had authority to lease the lands and grant an option to plaintiff to purchase them, that a lease with option to purchase of defendants' lands is a "disposition" of them within the meaning of F.S. § 270.07, F.S.A.; and that publication of the terms and conditions of the authority to accept bids for a Lease-Option of these lands was duly and regularly had, and plaintiff timely and properly made the high bid. It is further conceded and the Court concludes that the subsequent amendment to the time requirement in paragraph 3 of the Lease-Option did not require republication (see Defendants' Reply Memorandum, p. 8). There existed throughout a valid subsisting agreement granting to plaintiff an option to buy the property involved on fixed terms and prices, and the amendment in no way affected that agreement. The amendment was merely an exercise of dis-

cretion vested in defendants by the contract to alter the time requirements for performance of paragraph 3 of the lease. It was a written clarification regarding the then status of performance of one aspect of one lease covenant, an aspect about the performance of which there admittedly existed some "question" and which defendants chose not to litigate or otherwise pursue.

[6] With admirable candor, defendants have conceded that their defense is based upon their assertion that the manufacturing plant and facilities built by plaintiff on lands here involved, or contiguous thereto, is at this time not under full operation; but rather it is merely being maintained on an inactive status due to the current slowdown in solid fuel rocket development (see, Defendants' Reply Memorandum, p. 8).

[3] [7] When the State of Florida or one of its component agencies, enters into a contract with private persons, the same legal rules and principles apply to and govern the parties' rights under the contract. State agencies enjoy no privileged status affecting either their contractual rights or liabilities. Daniell v. Sherrill, Fla. 1950, 48 So.2d 736; McCarty v. Booth, Fla.1954, 69 So.2d 655; Gay v. Southern Builders, Inc., Fla. 1953, 66 So.2d 499. In construing this Lease-Option, therefore, the Court may look to Florida law on such contracts without regard to the public or private capacities of the parties involved.

[4,5] [8] The contract of the parties is a "Lease with Option To Purchase," in which there was a mutual exchange of undertakings, promises and covenants, more detailed enumeration of which is unnecessary. It suffices to say that mutually enforceable promises may constitute valid consideration for each other, and that this contract was supported by legal consideration. Jones v. McCallum, (Fla.1885), 21 Fla. 392; Chamberlain v. Lesley (Fla.1897),

39 Fla. 452, 22 So. 736; Walters v. Miller (Fla.1915), 70 Fla. 432, 70 So. 629; Foreman v. First National Bank (Fla.1918), 76 Fla. 48, 79 So. 742; Jenkins v. City Ice & Fuel Co. (Fla. 1935), 118 Fla. 795, 160 So. 215; Texas Co. v. Pensacola Maritime Corp., 279 F. 19 (5th Cir. 1922); Miami Coca-Cola Bottling v. Orange Crush Co., 296 F. 693 (5th Cir. 1924). The terms of the lease and the terms of the option were in some ways related, and in some ways independent of each other; but the exchange of mutually enforceable promises constituted consideration for both the lease and the option agreements. See, Sisco v. Rotenberg (Fla.1958), 104 So.2d 365; Cf. 32 American Jurisprudence, Landlord & Tenant, § 299.

[9] Defendants' principal defense is predicated on their contention which plaintiff must admit for purpose of the pending motions, that at the time plaintiff gave notice of exercise of the option its manufacturing plant and associated facilities were not in operation, but were merely being maintained by a 14-man maintenance staff. Defendants have characterized their legal defense as "failure of consideration", "failure to perform conditions precedent", and "time is the essence of an option contract". Whatever label the defense should take the Court must decide whether this asserted fact constitutes under any legal theory a defense to plaintiff's claim. The Court concludes as a matter of law that it does not.

[6] [10] The "failure of consideration" theory clearly does not apply in this case. In Jones v. McCallum (1885), 21 Fla. 392, the Florida Supreme Court decided under what circumstances a contract could be avoided due to failure of consideration. McCallum agreed with Jones to write editorials and lend counsel to Jones in a newspaper enterprise; and Jones agreed to pay McCallum $1,000.00. McCallum died within days after the agreement and prior to performance of *any* services under the contract. His

widow sought payment under a provision requiring payment to her in case McCallum died. The Florida Supreme Court held tha recovery could be had if McCallum had performed *any* services under the contract; but since *no* services had been rendered prior to his death the consideration for the agreement had failed and the promise of Jones was discharged.

Applying that rule here it is clear that consideration has not failed. Plaintiff has paid rental each year when due and has paid "in lieu" ad valorem taxes. Plaintiff has further become obligated to pay the $1,265,000.00 purchase price. Consideration has not "failed" here. Moreover, its alleged failure was not asserted until long after plaintiff had exercised its option to purchase which terminated the lease and all of the covenants thereunder save only that against land speculation until December 21, 1971 (paragraph 5 of Lease-Option).

[11] The "condition precedent" argument is that the option to purchase was conditioned on there being no breach of any lease covenant at the time plaintiff gave notice of exercise of the option. Defendants argue that plaintiff's manufacturing facilities were not in operation when the option was exercised and therefore plaintiff was not entitled to exercise and is not entitled to purchase.

[7] An option contract is not a contract of sale. "[I]t is a unilateral contract which gives the option holder the right to purchase under the terms and conditions of the option agreement. South Inv. Corp. v. Norton (Fla. 1952), 57 So.2d 1, 2. Thus, the Court must look to "the terms and conditions of the option agreement" to ascertain whether good standing under the lease is a *condition* of the option agreement.

[8, 9] The parties' agreement speaks for itself, and it makes very clear the relationship of option terms and lease covenants. The lease covenants are contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 10 and 11; and the option terms are contained in paragraphs 2, 4, 5 and 8. The agreement specifically provides in paragraph 4, that:

> "It is mutually understood and agreed that this lease shall terminate if option to purchase said lands hereinafter granted by Lessor to Lessee is exercised by Lessee *and in such event no covenant herein made on the part of Lessee shall extend beyond such termination of this lease excepting the covenant of Lessee contained in paragraph 5* next below."[2]

And in paragraph 8, the agreement is that:

> "The Lessor herewith grants to the Lessee the exclusive right, option and privilege to purchase all of the land described herein *at any time within the ten (10) year lease period* at and for the price of Fifty Dollars ($50.00) per acre. * * *"

These two contract provisions explicitly define the nature of the option plaintiff received under this contract. Its terms are simple and they are *independent* of the lease covenants except as specified. Plaintiff had the option to purchase the lands during the lease term for a designated price upon terms designated in paragraph 8. If and when plaintiff exercised its option in the manner required by law the contract specifically provided that the "lease shall terminate" and that "no covenant herein made on the part of Lessee shall extend beyond such termination of this lease excepting the covenant" not to use the lands for speculative purposes within ten years after execution of the contract. Under this contract, para-

2. All emphasis supplied unless otherwise indicated.

graph 3 and all other lease covenants (save one) expire and are of no further effect when the option is exercised.

The contract (including both the "lease" terms and the "option" terms) provides no other conditions to the exercise of the option and the law implies none. Insofar as lease convenants are concerned the contract makes termination for default in performance or breach of lease covenants only an alternative which defendants may utilize *in their discretion*[3] if they conclude that the lease is being breached. The contract requires specific action to be taken to declare default in any lease covenant and terminate the agreement, furthermore, and does not contain an automatic default or reverter provision. The contract rather requires that, in the event defendants desired to declare default or terminate the contract they were required to give notice of such alleged breach and to give plaintiff sixty days in which to *cure* any default.

The record is undisputed that defendants have never given a sixty day notice of default; and they gave no notice of default of any kind from the commencement of the lease term throught the time plaintiff exercised the purchase option. It would be inequitable to allow defendants to avoid now the contract when plaintiff had never been given notice of default and had never been given opportunity to cure any default—an opportunity defendants were bound to afford to plaintiff before the Lease-Option could be terminated.

In sum, paragraph 3 and all other lease terms save one were covenants of the lease for breach of which defendants had power to terminate the Lease-Option; but they were not, either by bylaw or by contract, *conditions* of the option or conditions precedent to its exercise. De-

3. This is the terminology used in the notice of authority to accept bids, which was reduced to a specific procedure in the contract.

fendants cannot after the exercise of the option to purchase validly avoid the option by then asserting for the first time a prior alleged breach of a covenant of the lease wherein the option was granted. E.g., Gassert v. Anderson (1937), 201 Minn. 515, 276 N.W. 808; Keogh v. Peck (1925), 316 Ill. 318, 147 N.E. 266; Chapman Drug Co. v. Chapman (1960), 207 Tenn. 502, 341 S.W.2d 392; Padilla v. Sais (1966), 76 N.M. 247, 414 P.2d 223; Reynolds v. Earley (1955), 241 N.C. 521, 85 S.E.2d 904; Shannon v. Jacobson (1928), 262 Mass. 463, 160 N.E. 245; Cf. South Inv. Corp. v. Norton, supra. Accordingly, plaintiff had the right to exercise its option throughout the lease term unless and until defendants properly and in conformity with its terms, terminated the lease and the option to purchase therein granted, or, at least gave proper notice of default or breach.

[10] [12] Defendants have argued that "time is the essence of an option contract" in conjunction with their assertion that plaintiff has ceased operations at the manufacturing plant. The reasoning applicable to the "condition precedent" argument disposes of this theory. Time is admittedly the essence of an option in that the term of the option limits the optionee's right to exercise. Under the Lease-Option plaintiff's right to exercise the option survived for the lease term which term ended after ten years or upon proper termination after declaration of default by defendants. Therefore, the undisputed fact that plaintiff exercised the option prior to any such declaration of default disposes of this theory.

[11, 12] [13] Where one holds an option based on a valid consideration to purchase real estate and desires to exercise the option to buy, he must definitely accept the proposition by notifying the vendor of such decision within the time specified on the terms named. Orlando Realty Board Building Corp. v. Hilpert (1927), 93 Fla. 954, 113 So.

100. When an option to buy lands is definitely accepted, it ceases to be an option and ripens into a mutually binding and enforceable contract, the terms of which are identical to those contained in the option. *Ibid;* Behrman v. Max (1931), 102 Fla. 1094, 137 So. 120. The Court concludes as a matter of law that the written notices of exercise dispatched by plaintiff to defendants on September 8, 1969, were timely and proper and constituted exercise by plaintiff of its option in accordance with the option terms contained in the contract. Accordingly, on September 10, 1969 (the date defendants received this notice), the option ripened into a mutually binding and enforceable contract for sale; and the landlord-tenant relationship between the parties ceased. Defendants' attempted cancellation of the contract given thereafter is and was null and void and of no force or effect.

[13] [14] The contract provides in paragraph 8(b) that plaintiff's initial payment of not less than 20% of the purchase price becomes due and payable at such time as the parties execute a contract to purchase. It was not necessary that plaintiff tender actual payment of that sum in order to bring this action. Sisco v. Rotenberg, supra. It suffices that plaintiff advised defendants and the Court, as it did, that plaintiff was ready, willing and able to perform its contractual obligations. There has been no question raised of plaintiff's ability to perform.

[14] [15] In their Answer defendants asserted affirmatively the defense of "failure of inducement", which defense the Court concludes is insufficient as a matter of law.

[15, 16] [16] In their Answer defendants asserted affirmatively the defense that the contract was contrary to public policy. On the undisputed facts, that defense is as a matter of law insufficient. A contract is not void

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as against public policy unless it is injurious to the interests of the public, or contravenes some established interest of society. 7 Florida Jurisprudence, Contracts, § 62. That is, contracts void as contrary to public policy are so because they are either agreements to effect some unlawful or socially repugnant end, or agreements to effect some lawful end by unlawful or socially repugnant means. See, 6A Corbin on Contracts, § 1373, p. 2. This contract fits in neither category. It was entered by defendants as public officials pursuant to legislative authority hereinbefore cited.

[17, 18] [17] Defendants also asserted by way of motion to dismiss the complaint filed along with their Answer to the complaint, that the contract is not sufficiently definite in its terms to be specifically enforced. This contention, the Court concludes, is without merit. The option to purchase granted the plaintiff which became a binding contract of sale and purchase upon plaintiff's exercise of its option, contained all of the essential provisions of a contract for the sale of land, i. e. (1) the property to be conveyed and the interest therein to be conveyed is definitely described; (2) the purchase price is definite and specific; and (3) the time and terms of payment of the purchase price are definite. Edwards v. Rives (1895), 35 Fla. 89, 17 So. 416; Florida Yacht Club v. Renfroe (1914), 67 Fla. 154, 64 So. 742; Dixie Naval Stores Co. v. German-American Lumber Co. (1918), 76 Fla. 339, 79 So. 836. The fact that the contract in question provided alternatively at plaintiff's election, for an all cash payment simultaneously with delivery to plaintiff of a deed or a cash down payment simultaneously with execution of a deed, with the balance of the purchase price to be payable over a definite period of time pursuant to a promissory note given by plaintiff to defendants, does not preclude the contract from being specifically enforced. Taylor v. Mathews

(1907), 53 Fla. 776, 44 So. 146. The elements urged by defendants that are not specifically covered in the contract are not essential elements of a contract to purchase. As to these, absolute certainty or definiteness is not required (29A, Fla. Jur., Specific Performance, § 40, pp. 633, 634) and each may be supplied or reduced to certainty by legal rules and presumptions. Daubmyre v. Hunter (1923), 86 Fla. 326, 98 So. 69; Stone v. Austin (2nd DCA 1958), 107 So.2d 232.

[18] The equities herein are with the plaintiff. It would be inequitable to now deny plaintiff the rights accorded it under the parties' contract. Specific performance is an appropriate and necessary remedy. There is no genuine issue as to any material fact and plaintiff is entitled to judgment as a matter of law.

Accordingly, it is

Ordered and adjudged as follows:

[1] Plaintiff's Motion for Summary Judgment be and the same hereby is granted; and final judgment be and the same hereby is entered in favor of plaintiff and against defendants for the relief sought in the complaint. Defendants are hereby ordered and directed within thirty days from the date of entry of this Order, to execute a contract of purchase covering the lands described in paragraph No. 1 of the Lease-Option in accordance with the terms of paragraph 8(b) thereof unless by agreement all parties extend such thirty days' time limit. Defendants are further hereby ordered and directed to accept payment by plaintiff in any amount equal to or in excess of twenty percent (20%) of the total purchase price simultaneously with execution of said contract to purchase; and to accept a promissory note for an amount equal to the unpaid balance of the purchase price, and to accept payments, including any advance pay-

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ments, made thereunder in accordance with paragraph 8 (b) of the contract; and upon payment by plaintiff of the balance and entirety of the contract purchase price, defendants are further hereby ordered and directed to deliver to plaintiff a fee simple deed to said lands vesting good and merchantable fee simple title to plaintiff, subject to applicable statutory rights and reservations as provided for in paragraph 8(b) of the Lease-Option. Should plaintiff elect at or prior to the time herein prescribed for closing to pay the total amount of the purchase price for said lands, the defendants are ordered and directed to receive from the plaintiff the total amount of purchase price for said lands in cash and to simultaneously therewith execute and deliver to the plaintiff a deed vesting in the plaintiff good and merchantable fee simple title to said lands, subject only to applicable statutory rights and reservations as provided for in paragraph 8(a) of the Lease-Option. The covenant contained in Paragraph 5 of the Lease-Option remains in full force and effect to the same extent and in the same manner as if the contract had been performed without necessity for Court ordered specific performance.

[2] Defendant's Motion to Dismiss be and the same hereby is denied.

[3] The parties will bear their own costs.

[4] The Court retains jurisdiction of this cause for the purpose of entering such further order or orders as may be necessary and appropriate to enforce the provisions of this judgment.

APPENDIX "B"

AEROJET-GENERAL CORPORATION,
Plaintiff-Appellee,

v.

Reubin O'Donovan ASKEW, Governor of the State of Florida, et al., Defendants-Appellants.

No. 31018.

United States Court of Appeals,
Fifth Circuit.
Dec. 9, 1971.
Rehearing and Rehearing En Banc
Feb. 2, 1972.

Action by private corporation for specific performance of option to purchase land which had been leased from Florida State Board of Trustees of the Internal Improvement Trust Fund and the Florida State Board of Education. The United States District Court for the Northern District of Florida, David L. Middlebrooks, Jr., J, 318 F.Supp. 55, granted summary judgment for plaintiffs and ordered specific performance, and defendants appealed. The Court of Appeals, Simpson, Circuit Judge, held that since title to land was vested in the Board of Education, the suit did not constitute an action against the state and, thus was not barred by the Eleventh Amendment. The Court further held that where lessee had fulfilled its promise to construct manufacturing plant and associated facilities on land, which lessee had option to purchase, and in so doing to utilize land in conjunction with option of such plant, lessee's discontinuance of solid fuel development operations when federal government cut back spending on such research did not constitute failure of consideration and, thus, did not disqualify lessee, which lessor had not notified of

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any breach or sent 60-day cure notice, from exercising option to purchase.

Affirmed.

1. Courts (Key) 303(1)

Florida State Board of Trustees of the Internal Improvement Trust Fund and the Florida State Board of Education, sued by Ohio corporation for specific performance of option to purchase land, which corporation had leased from the Boards, did not waive right to claim immunity from suit under the Eleventh Amendment to the Federal Constitution by defending on the merits in the federal district court. U.S.C.A.Const. Amend. 11.

2. Courts (Key) 303(1)

Two-step test for existence of Eleventh Amendment immunity from suit in federal court are: (1) whether the action is against the state, and (2) if the action is against the state, whether the state consented to be sued. U.S.C.A.Const. Amend. 11.

3. Courts (Key) 359

In determining whether an action is against the state for purpose of determining Eleventh Amendment immunity from suit in federal court, the federal court is to look to the law of the appropriate state for guidance. U.S.C.A.Const. Amend. 11.

4. Courts (Key) 303(2)

Action by Ohio corporation against Florida State Board of Trustees for the Internal Improvement Fund and the Florida State Board of Education seeking specific performance of option to purchase land, which corporation had leased from the Boards, did not constitute an action against

the State of Florida and therefore was not barred by the Eleventh Amendment to the United States Constitution, since, under Florida law, title to state school lands is in the State Board of Education. F.S.A. § 229.061(6); U.S. C.A.Const. Amend. 11.

5. Landlord and Tenant (Key) 92(4)

Where lessee had fulfilled its promise to construct manufacturing plant and associated facilities on land, which lessee had option to purchase, and in so doing to utilize land in conjunction with operation of such plant, lessee's discontinuance of solid fuel development operations when federal government cut back spending on such research did not constitute failure of consideration and, thus, did not disqualify lessee, which lessor had not notified of any breach or sent 60-day cure notice, from exercising option to purchase.

6. Specific Performance (Key) 100

It was not abuse of discretion to grant equitable relief of specific performance without holding an evidentiary hearing, on ground that increase in value between date of lease and exercise of option to purchase raised issue of inadequacy of consideration, where lessors presented no reason to characterize option purchase price of $50 an acre as unreasonable or inequitable at time lease was executed.

7. Public Lands (Key) 147½

As officials of the state of Florida, the State Board of Education and Board of Trustees of Internal Improvement Trust Fund, sued for specific performance of option clause giving lessee of property owned by Board of Education the option to purchase property, were limited to activities that were within their statutory authority.

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8. **States (Key) 89**

Predecessors in office of Florida State Board of Education and Board of Trustees of Internal Improvement Trust Fund did not exceed their warrants by executing lease, which served as basis for lawsuit against their successors for specific performance of option to purchase clause exercisable ten years following commencement of lease.

9. **States (Key) 89**

Claimed inadequacy of published notice of bids for lease, with option to purchase, of public lands, in that that portion requiring lessee to construct manufacturing facilities was fatally indefinite, would not permit Florida State Board of Trustees of the Internal Improvement Trust Fund and Florida State Board of Education, sued for specific performance of purchase option, to escape performance because of claimed inadequacy of notice, which had been published by officials' predecessors, in absence of allegation of any fraud, favoritism, collusion or corruption between option holder, which had made required payments in good faith for ten years and had dispatched required notice of election necessary to exercise its option, and officials' predecessors.

Robert L. Shevin, Atty. Gen., Fla., Ronald W. Sabo, Asst. Atty. Gen., Philip S. Bennett, Gen. Counsel, State Bd. of Trustees of the Internal Improvement Trust Fund, Stephen Marc Slepin, Counsel, State Bd. of Ed., Rivers Buford, Jr., Gen. Counsel, State Bd. of Ed., Tallahassee, Fla., Marion E. Sibley, Sp. Asst. Atty. Gen., Miami Beach, Fla., for defendants-appellants.

George W. Wright, Jr., Karl B. Block, Jr., Miami, Fla., for plaintiff-appellee.

Before GODBOLD, SIMPSON and CLARK, Circuit Judges.

SIMPSON, Circuit Judge:

The Aerojet-General Corporation (plaintiff), an Ohio corporation doing business in the State of Florida, brought suit in the district court against the State Board of Trustees of the Internal Improvement Trust Fund and the State Board of Education (defendants),[1] seeking specific performance of an option to purchase approximately 25,313 acres of land in Dade County, Florida. The defendants entered a general appearance and interposed several affirmative defenses. The district court granted a summary judgment in favor of the plaintiff and ordered the defendants to convey to the plaintiff the specified real estate. Aerojet-General Corporation v. Kirk, 1970, N.D.Fla., 318 F.Supp.

In September and October, 1961, the defendants' predecessors in office caused to be published in the Homestead News, a newspaper of general circulation in Dade

1. The following officials of the State of Florida compose the State Board of Education as well as the separate Board of Trustees of the Internal Improvement Trust Fund: Governor, Secretary of State, Attorney-General, Comptroller, Treasurer, Commissioner of Agriculture, and Commissioner of Education. Fla. Stat., Secs. 229.012 and 253.02(1), F.S.A.

County, Florida, a Notice of Bids and Public Sale[2] by 55. Timely appeal to this Court followed. We affirm the district court.

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2. The text of the Notice was:

"NOTICE
BIDS TO BE RECEIVED
PUBLIC SALE

In pursuance of authorizations by the State Board of Education of Florida and Trustees of the Internal Improvement Fund of the State of Florida, respectively, competitive bids will be received at 10:00 A.M. (E.S.T.), on *OCTOBER 24, A.D., 1961*, in the Board Room of the Governor's Office in the State Capitol Building, Tallahassee, Florida for a ten-year lease with option to purchase, subject to provisions set forth herein, all of the following described lands in Dade County, Florida, to-wit:

Description	Twp. S.	Rge. E.	Acreage	Owner
Sections 1 through 14	56	37	8960	Tr. I. I. Fund
Sections 15 and 16	56	37	1280	Bd. of Ed.
Sections 17 through 20	56	37	2560	Tr. I. I. Fund
Sections 21 through 23	56	37	1920	Bd. of Ed.
Sections 24 through 36	56	37	8320	Tr. I. I. Fund
Section 16	57	37	640	Bd. of Ed.
W ½ of Section 5	59	38	328	Tr. I. I. Fund
Section 6	59	38	665	Tr. I. I. Fund
Section 16	59	38	640	Bd. of Ed.

Total acreage including estimated area of unsurveyed sections - - - 25,313 acres.

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which ten-year lease with option to purchase, if awarded, will require lessee-optionee to make payment of rental annually in advance during the lease term at the rate per acre at which award is made, also to make payment during the lease term to appropriate public agencies of an annual sum equal to any and all ad valorem taxes which would be due and payable if all of said lands and improvements thereon were owned in fee simple by such lessee-optionee. Under the lease-option lessee-optionee may during its ten-year consummate purchase of all of said lands at the price bid and upon which award is made by full payment of total purchase price for deed, or by execution of purchase contract whereunder 20% of total purchase price shall be payable in cash on execution of contract, with balance in ten equal consecutive annual installments with interest on unpaid balance at 5% per annum. Neither the lease-option nor purchase contract will be subject to assignment without formal approval of both the Board of Education and said Trustees. Instrument of conveyance will contain all applicable statutory rights and reservations in effect on its date. Lessee-optionee will be required by covenant to commence, within a reasonable period of time, construction and installation of a manufacturing plant and associated facilities on said land or upon lands contiguous thereto and owned, leased or con-

means of which bids were solicited for the lease of lands owned by the defendants in Dade County, Florida. On De-

(Footnote 2 Continued)—
trolled by lessee-optionee, and to utilize above described land for operation of its manufacturing plant and associated facilities, and shall not, during the full period of ten years from date of the lease-option use any of said land for land speculation purposes without formal approval of both of the two said State Boards.

Bids must specify offer for both (1) annual lease rental per acre and (2) price per acre for option to purchase.

Bids for lease-option of less than the entire acreage above described will not be eligible for consideration.

Mailed bids must be directed to the State Land Office, Room 114, The Capitol, Tallahassee, Florida, and each mailed bid accompanied by certified or cashier's check in amount equal to the annual rental as bid for the entire acreage, payable to "Board of Education and Trustees of Internal Improvement Fund." Bidders may attach brief statement of nature of their intended operations for use of said lands. A purpose of this offering is to motivate establishment of facilities and production in the interest of the economy of Florida and National defense.

Oral competitive bidding for lease-option of the entire acreage (public auction) is scheduled to commence at the time and place stated first above, following the opening and reading of all mailed bids. The highest mailed bid, in compliance with the requirements herein, will become the starting offer for oral bidding from the floor. Bidders present may raise their written or oral offers. Highest bidder will be required to sign memorandum evidencing such bid and submit certified or cashier's check in amount not less than annual rental for one year for the entire acreage within 24 hours after award is made.

The right to reject any and all bids is reserved. Checks submitted by unsuccessful bidders will be promptly returned after consideration of the bids. In the event of award and upon execution of the lease-option the check tendered by the successful bidder will be credited as paid rental for the period of time covered by such amount.

In the event an award is made and development and use for said purpose shall not be commenced within twelve months after date of lease-option, the said lease-option will then become subject to cancellation at the discretion of the two State owner-boards.

The above described lands include unsurveyed sections and estimated acreage and lessee-optionee will have the right by field survey made at the expense of lessee-optionee and by a Registered Land Surveyor or Certified Public Land Surveyor, approved by the two State Boards to establish a more accurate total acreage. In such event subsequent rentals or purchase payments shall be adjusted in accordance with the corrected total acreage.

BY ORDERS of the State Board of Education and Trustees of the Internal Improvement Fund."

cember 21, 1961, the plaintiff and the defendants' predecessors in office entered into a written lease with option to purchase the leased lands at $50.00 per acre.[3] An amend-

3. This instrument entitled "Lease with Option to Purchase" recites that it was made December 21, 1961, "by and between the State of Florida, by and through the Trustees of the Internal Improvement Fund of the State of Florida, and the State Board of Education of Florida, component state agencies of the State of Florida, with offices located in Tallahassee, Leon County, Florida, and Aerojet-General Corporation, a corporation organized and existing under the laws of the State of Ohio, with principal place of business in Azusa, Los Angeles County, California". It recites in a series of "Whereas" clauses (a) that the two state agencies are vested with title to certain lands in Dade County, Florida, and are charged with the administration, management, control, supervision, conservation and protection of those lands; and (b) that said agencies have been advised by Aerojet-General Corporation that it has a need for a large tract of land consisting in part of these State lands for the purpose of establishing a manufacturing plant and associated facilities to be used in production activities designed to strengthen the defense posture of the United States, and (c) that since the best interests of the people of Florida will be served by said State lands being devoted to such usage, the said agencies have in compliance with statutory requirements of Florida taken such action as was necessary to permit the use of the State lands as aforesaid, and (d) all statutory requirements have been satisfied and all necessary action taken, the said component state agencies of the State of Florida are authorized and empowered to enter into this agreement and authorize its execution.

It was then recited that it was mutually understood and agreed that in consideration of the sum of $10.00 paid by each party to the other, and in further consideration of the mutual covenants of the respective parties, that it was agreed between the component state agencies of the State of Florida thereinafter referred to as "Lessor" and Aerojet-General Corporation, thereinafter referred to as "Lessee", as follows:

1. That the Lessor leases the following described land, situate in Dade County, Florida, the ownership of said land being indicated opposite the description: (Here followed the description by section, township and range of the 25,313 acres of land involved, with ownership of some parcels attributed to "Trustees, I.I.F.", and some portions attributed to "Board of Education"), to have and to hold for a period of ten years from date thereof upon the following terms and conditions, part of which we will paraphrase and part of which, indicated by quotation marks, we will quote verbatim:

2. This paragraph contained the Lessee's agreement to pay an amount equal to the sum of $2.50 per acre during the lease unless the lease was sooner terminated or cancelled as provided for therein, in advance, the first payment to be on execution of the agreement with subsequent payments on each anniversary date thereafter.

(Footnote 3 Continued)—

3. "The Lessee herewith agrees and covenants to commence within twelve (12) months after the execution hereof, the construction and installation of a manufacturing plant and associated facilities on said land or upon lands contiguous thereto owned, leased or controlled by Lessee and in so doing to utilize the aforementioned described land in conjunction with the operation of such manufacturing plant and associated facilities."

4. "The Lessor shall have the right to cancel this lease upon breach or failure of Lessee to comply with any of the covenants herein agreed to be kept or performed by Lessee. However, in the event of such breach or failure on the part of Lessee, Lessor shall give Lessee sixty (60) days notice, in writing, of its intention to cancel this lease and thereupon, unless such breach or failure be cured by Lessee within said sixty (60) day period, this lease and the terms hereof shall expire and come to an end on the date fixed in such notice as if the said date were the date originally fixed in this lease for the expiration thereof.

"It is mutually understood and agreed that this lease shall terminate if option to purchase said lands hereinafter granted by Lessor to Lessee is exercised by Lessee and that in such event no covenant herein made on the part of Lessee shall extend beyond such termination of this lease excepting the covenant of Lessee contained in paragraph 5 next below."

5. "The Lessee agrees and herewith covenants that the land herein leased and for which an option to purchase is herein granted shall not be used by Lessee for purposes of land speculation in any manner whatsoever for a period of ten (10) years next following the execution of this Agreement without written approval of Lessor first had and obtained."

6. This paragraph provided that improvements of every kind and nature placed on the lands during the term of the lease should be, in all legal intendment, as between parties, considered the personal property of the Lessee and provided for their removal by the Lessee upon the expiration or cancellation of the lease, or in the alternative for their abandonment by the Lessee, in which latter event the title was to pass to Lessor.

7. This paragraph provided for the payment annually by the Lessee to the proper public agencies a sum of money equal to and considered as in lieu of ad valorem taxes which would be payable on the lands if title thereto were owned in fee by the Lessee, and further to pay any valid special assessment levied on said lands. These payments were to continue through the lease period or until purchase of the lands by the Lessee as provided in the lease. Procedure for compliance with these provisions was made the responsibility of the Lessee in cooperation with local government agencies.

8. "The Lessor herewith grants to the Lessee the exclusive right, option and privilege to purchase all of the land described herein at any time within the ten (10) year lease period at and for a price of Fifty Dollars ($50.00) per acre. In the event the Lessee exercises its right, option and privilege to purchase the above described land, the purchase price of said land to be de-

(Footnote 3 Continued)—
termined by the number of acres multiplied by Fifty Dollars ($50.00), less the amount of any unearned rent paid by Lessee under the terms of this lease shall be payable as follows:

(a) Upon the election of Lessee, the total amount of the purchase price to be determined, as aforesaid, shall be paid to Lessor simultaneously with delivery to Lessee of a deed to said lands vesting good and merchantable fee simple title thereto in Lessee subject only to applicable statutory rights and reservations in effect on date of conveyance and the covenant on the part of Lessee to be kept and performed contained in paragraph 5 above, or

(b) Upon election of Lessee, the Payment of any amount equal to or in excess of twenty per cent (20%) of the total purchase price to be determined, as aforesaid, shall be paid to Lessor simultaneously with the execution of a contract to purchase by and between the parties hereto, which contract to purchase shall provide for a promissory note for an amount equal to the unpaid balance due to Lessor from Lessee for purchase price of said lands described herein, which note shall be paid to Lessor by Lessee in ten (10) equal and consecutive annual installments together with interest on the unpaid balance thereof at the rate of five per cent (5%) per annum. Lessee shall have the express right and privilege to pay up to and including the entire unpaid balance of any promissory note representative of the unpaid balance of the purchase price at any time after the execution thereof, without penalty. Upon payment to Lessor by Lessee of the promissory note representing the balance due on contract to purchase, the Lessor agrees to deliver to said Lessee a fee simple deed to said lands vesting good and merchantable fee simple title in Lessee, subject only to the applicable statutory rights and reservations in effect on date of the contract to purchase and the covenant of Lessee contained in paragraph 5 above."

9. This paragraph required the written approval of the Lessor for assignment of the lease by the Lessee.

10. This paragraph contained the usual Lessee covenant to hold the Lessor harmless from liability resulting from the Lessee's operations "under the terms of this lease prior to exercise of option herein granted to purchase the land herein described".

11. This paragraph obligated the Lessee to grant easements and rights of entry upon the land to the Central and Southern Florida Flood Control District, or its successor, as needed or required to make or construct canals, cuts, sluiceways, dikes and other such works.

The instrument was concluded with the usual formal signature clause.

ment to paragraph three of the lease was executed by the parties on January 14, 1963.[4]

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4. This instrument read as follows:

"AMENDMENT TO PARAGRAPH
THREE OF LEASE WITH
OPTION TO PURCHASE

"WHEREAS, on December 21, 1961, the Trustees of the Internal Improvement Fund of the State of Florida and the State Board of Education of Florida, as Lessor, entered into a Lease with Option to Purchase with Aerojet-General Corporation, as Lessee, for certain land situate in Dade County, Florida, and comprising approximately 25,313 acres, and

WHEREAS, Lessee, in Paragraph Three of the Lease with Option to Purchase above referred to, agrees and covenants to commence construction and installation of a manufacturing plant and associated facilities on the lands described in the Agreement or upon lands contiguous thereto, owned, leased or controlled by Lessee, within twelve months from the date of execution of said Lease with Option to Purchase, and

WHEREAS, prior to December 21, 1962, Lessee expended considerable funds in order to commence the actual building construction and installation of such facilities, including extensive grading and foundation work; however, in order to eliminate any question as to whether Paragraph Three has been complied with, Lessee has heretofore submitted formal request to Lessor for modification of Paragraph Three of the instrument of Lease with Option to Purchase so as to grant an additional period of time of two years within which to commence construction and installation of a manufacturing plant as provided in this paragraph, and

WHEREAS, the Trustees of the Internal Improvement Fund and the State Board of Education of Florida did consider this request at the meetings of said agencies held on October 9, 1962, and did determine and agree that it would best serve the interests of all parties to the Agreement as well as the public interest to approve this request for additional time.

NOW, THEREFORE, that for and in consideration of the sum of TEN DOLLARS ($10.00) paid by each party hereto to the other, receipt of which the parties each and severally acknowledge, and in further consideration of the mutual covenants of the respective parties hereto, it is hereby agreed by and between the Trustees of the Internal Improvement Fund of the State of Florida and the State Board of Education of Florida, component state agencies of the State of Florida, referred to in the above mentioned Lease with Option to Purchase as 'Lessor', and Aerojet-General Corporation, referred to in same as 'Lessee', as follows:

1. That Paragraph Three of said Lease with Option to Purchase dated December 21, 1961, by and between the parties hereto, be and the same hereby is amended in its entirety to read as follows:

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In addition to leasing the subject land from defendants, the plaintiff purchased additional land surrounding the defendants' lands, at an expenditure of $7,100,000. In early 1962, plaintiff began construction of a plant for the development of solid rocket fuels, which resulted in a capital investment on the plaintiff's part for buildings and equipment of $21,200,000. About $2,000,000 of this construction was located on the land leased from the Board of Education and the Board of Trustees of the Internal Improvement Trust Fund. The plant was completed in the spring of 1964 and was in operation until June, 1967, at which time it ceased operations due to cutbacks in the federal government's spending on solid rocket fuel research and development. Since that time the plaintiff has maintained a caretaker force of fourteen people at the plant.

(Footnote 4 Continued)—

'3. The Lessee herewith agrees and covenants to commence prior to December 21, 1964, the construction and installation of a manufacturing plant and associated facilities on said land or upon lands contiguous thereto owned, leased or controlled by Lessee and in so doing to utilize the aforementioned described land in conjunction with the operation of such manufacturing plant and associated facilities.'

2. That, except as provided in Paragraph One above, all of the terms, covenants, and conditions of said Lease with Option to Purchase dated December 21, 1961, shall remain the same.

IN WITNESS WHEREOF, the Trustees of the Internal Improvement Fund and the State Board of Education, hereinabove and in said Lease with Option to Purchase referred to as Lessor, have hereunto set their hands and affixed their respective seals and the seal of the Commissioner of Agriculture of the State of Florida and Aerojet-General Corporation, hereinabove and in said Lease with Option to Purchase referred to as Lessee, has caused its name to be signed by its duly authorized officers and attested by its Secretary and affixed its corporate seal, in triplicate, this *14th* day of January, 1963."

On September 8, 1969, the plaintiff notified each of the defendants in writing[5] that it had elected to exercise its option to purchase the lands which are the subject of the lease. Prior to that date, the plaintiff had paid over $500,000 in yearly rentals under the lease to the defendants and $231,000 under Paragraph 7 of the lease to Dade County in lieu of ad valorem taxes. Payments under the lease were current in all respects. At no time prior to the "notify date", September 8, 1969, had the defendants or their predecessors in office ever notified plaintiff or even intimated to it that plaintiff had failed in any way whatever to comply with the terms of the lease. No objection was made prior to that time to the reduction in

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5. The letter to the State Board of Education was as follows:

"State Board of Education
Capitol Building
Tallahassee, Florida
Attention: Mr. Floyd T. Christian
Commissioner of Education

Reference: Lease with Option to Purchase dated December 21, 1961, between Trustees of the Internal Improvement Fund of the State of Florida and the State Board of Education of Florida, as Lessors, and Aerojet-General Corporation, as Lessee

Gentlemen:

Aerojet-General Corporation has elected to exercise its option to purchase the lands which are the subject of the above lease.

We are enclosing herewith a copy of this Notice of Exercise of Option to Purchase, the original of which has been forwarded to the State of Florida, Board of Trustees of the Internal Improvement Fund.

We would appreciate your advice as to the procedure you wish to follow in the closing of this transaction.

Very truly yours,

AEROJET-GENERAL
CORPORATION
E. E. Nelson
Plant Manager".

The letter to the Board of Trustees of the Internal Improvement Fund was identical except for the addressee and its being directed to the attention of Mr. James T. Williams, Chief State Land Office.

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work force caused by the shutdown in operations of June, 1967. At a meeting of the State Board of Education and of the Board of Trustees of the Internal Improvement Trust Fund on October 21, 1969, it was decided not to convey the land to the plaintiff. This suit to compel conveyance of the property was instituted that same day.

The complaint for specific performance recited the terms of the lease and the plaintiff's attempt to exercise its option to purchase. It asserted that the plaintiff was ready, willing, and able to pay the required amount of the purchase price simultaneously with the execution of a contract to purchase between the plaintiff and the defendants, but that the "defendants have advised the plaintiff that they will not accept said required amount of the purchase price and will not execute, and have failed and refused to execute, said contract to purchase."

On December 1, 1969, the defendants filed their answer in the court below in which they admitted the allegations of the complaint[6] and interposed several affirmative defenses. The answer asserted that plaintiff had breached the contract by shutting down its operations in June, 1967, thereby rendering it ineligible to purchase the property under the terms of the option clause. Additionally, the defendants suggested that the remedy of specific performance was inappropriate because the value of the land involved had appreciated considerably between the time the lease was executed and the time that the plaintiff gave its notice of election to exercise the option to purchase. On September 21, 1970, the district court granted the plaintiff's motion for summary judg-

6. The answer to the complaint as well as to Requests for Admissions asserted that defendants were without knowledge of the allegations of plaintiff's being an Ohio corporation with its principal place of business in a state other than Florida. This was covered by affidavit in connection with the Motion for Summary Judgment and is not in dispute.

ment and directed the defendants to execute and comply with a contract of sale of the real property once the plaintiff had made the prescribed payments.

On January 15, 1971, the defendants filed their appellate brief with this Court in which they urged the reversal of the grant of summary judgment in favor of the plaintiff on the following grounds: (1) the plaintiff was in default under the terms of the lease at the time it sought to exercise the option to purchase because of the plant shutdown, and was therefore disqualified from exercising the option; and (2) the district court should not have granted summary judgment as to the remedy of specific performance because the appreciation in the value of the land raised a material issue of fact which necessitated a trial on the merits. In response, the plaintiff argued that the lease clearly empowered the lessee to exercise its option at any time within the lease period and that the defendants, prior to their refusal to convey the land, had at no time given the required sixty day notice of default to the plaintiff. Aerojet of course took the position that the district court's grant of summary judgment was proper.

The State of Florida underwent a change of administration on January 5, 1971. The successor defendants, after a review of the record in this case, petitioned this Court for leave to file a supplemental brief. Leave was granted and oral argument postponed. On April 14, 1971, the defendants filed a supplemental brief in which they repudiated two concessions which their predecessors had made in the course of the proceedings in the district court: (1) that the defendants had authority under the laws of the State of Florida to grant to the plaintiff a ten-year option to purchase over twenty-five thousand acres of land at fifty dollars an acre; and (2) that the notice pub-

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lished in the Homestead News was sufficient to comply with the requirements of applicable Florida law.[7] In reply to the supplemental brief of the defendants, Aerojet filed a brief in which it argued that: (1) the law of Florida empowered the defendants to dispose of the lands held by them by means of lease, sale, or option; (2) the notice published in the Homestead News complied with all the pertinent provisions of the Florida statutes; and (3) the defendants were estopped to deny the validity of the option clause in the lease.

At oral argument, this Court, on its own motion, raised the question of whether this suit was barred by the provisions of the Eleventh Amendment to the United States Constitution.[8] In response to the Court's request, the parties submitted additional briefs on this ponit, Aerojet arguing that the suit is not barred by the Eleventh Amendment and the defendants taking the contrary position.

I.

Waiver of Eleventh Amendment Immunity by General Appearance

Even if this suit was initially barred by Eleventh Amendment immunity, such immunity may have been waived by general appearance and defense on the merits in the trial court. We approach the waiver question first.

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7. The district court noted:

"It is conceded by the defendants that the Trustees and the Board of Education have complete authority and discretion to convey and dispose of lands held by them in such manner as in their judgment may be most advantageous. * * * Defendants have likewise conceded that the notice provisions contained in Chapter 270, Florida Statutes, F.S.A., were followed; and there is no bar to plaintiff's claim arising out of the requirements of those statutes." 318 F.Supp. at 61.

8. "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

In Clark v. Barnard, 1883, 108 U.S. 436, 2 S.Ct. 878, 27 L.Ed. 780, the assignees of a bankrupt railroad and the treasurer of the State of Rhode Island contested ownership of a $100,000 certificate of indebtedness issued by the City of Boston. The assignees brought suit in federal court and named the State Treasurer, Samuel Clark, as a defendant. Clark demurred to the complaint on the basis that the Eleventh Amendment to the United States Constitution barred the suit. The demurrer was overruled. An interlocutory decree was subsequently entered ordering the City of Boston to pay into the registry of the court the face amount of the certificate and authorizing the State of Rhode Island to file a claim for damages for breach of a surety bond given by the officers of the railroad prior to its bankruptcy. The money was paid in and the State filed its claim. After judgment was entered for the assignees, Clark and the State appealed, raising the jurisdictional bar of the Eleventh Amendment. The Supreme Court rejected this argument saying:

> "We are relieved, however, from its consideration by the voluntary appearance of the state in intervening as a claimant of the fund in court. The immunity from suit belonging to a state, which is respected and protected by the constitution within the limits of the judicial power of the United States, is a personal privilege which it may waive at pleasure; so that in a suit, otherwise well brought, in which a state had sufficient interest to entitle it to become a party defendant, its appearance in a court of the United States would be a voluntary submission to its jurisdiction, while, of course, those courts are always open to it as a suitor in controversies between it and citizens of other states. In the present case the state of Rhode Island appeared in the cause and presented and prosecuted a claim to

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the fund in controversy, and thereby made itself a party to the litigation to the full extent required for its complete determination. It became an actor as well as defendant, as by its intervention the proceeding became one in the nature of an interpleader, in which it became necessary to adjudicate the adverse rights of the state and the appellees to the fund, to which both claimed title. The case differs from that of Georgia v. Jesup, 106 U.S. [458], 462 [1 S.Ct. 363, 27 L.Ed. 216], where the state expressly declined to become a party to the suit, and appeared only to protest against the exercise of jurisdiction by the court. The circumstance that the appearance of the state was entered without prejudice to the demurrer of Clark, the general treasurer, does not affect the result. For that demurrer could not reach beyond the question of the right to sue Clark by reason of his official character, which became insignificant when the state made itself a party; and in point of fact the bill was framed to avoid the objection, by charging Clark as a wrongdoer in his individual capacity." 108 U.S. at 447-448, 2 S.Ct. at 883-884, 27 L.Ed. at 784-785.

Were this the Supreme Court's final statement on the subject of the waiver of a state's Eleventh Amendment immunity by means of a general appearance in federal court, we would have no difficulty in finding such a waiver in this case. The waiver by general appearance doctrine was severely undermined, if not discarded, however, as a result of the Supreme Court's decision in Ford Motor Company v. Department of Treasury of the State of Indiana, 1945, 323 U.S. 459, 65 S.Ct. 347, 89 L.Ed. 389.

The Ford Motor Company brought suit in federal court against the department of the treasury of the State of Indiana and the board of that department, consisting of the

governor, treasurer and auditor, pursuant to Section 64-2614(a) of the Indiana statutes, seeking a refund of gross receipts taxes. The Indiana officials defended on the merits of the taxpayer's claim and were successful in the district court and in the court of appeals. The Supreme Court vacated the judgments of the lower courts and remanded the case with instructions to dismiss the complaint for want of the consent of the State of Indiana to suit. Without referring to its holding in Clark v. Barnard, supra, the Supreme Court disposed of the taxpayer's waiver of immunity by general appearance contention as follows:

> "It remains to be considered whether the attorney general for the State of Indiana in his conduct of the present proceeding has waived the state's immunity from suit. The state attorney general is authorized to represent the state in actions brought under the Indiana refund statute. He appeared in the federal District Court and the Circuit Court of Appeals and defended the suit on the merits. The objection to petitioner's suit as a violation of the Eleventh Amendment was first made and argued by Indiana in this Court. This was in time, however. The Eleventh Amendment declares a policy and sets forth an explicit limitation on federal judicial power of such compelling force that this Court will consider the issue arising under this Amendment in this case even though urged for the first time in this Court." 323 U.S. at 466-467, 65 S.Ct. at 351-352, 89 L.Ed. at 395-396.

[1] Following the holding in *Ford Motor Company*, we are of the opinion that the defendants did not waive the right to claim immunity from suit under the Eleventh

Amendment to the Constitution by defending on the merits in the district court.[9]

II.

The Existence of Eleventh Amendment Immunity

[2, 3] Mr. Justice Reed, speaking for the Court in *Ford Motor Company*, supra, laid down a two-step test for the existence of an Eleventh Amendment immunity from suit in federal court (1) whether the action is against the state, and (2) if the action is against the state, whether the state consented to be sued in the federal courts. 323 U.S. at 462, 65 S.Ct. at 349, 89 L.Ed. at 395. The Court indicated that, in answering the first inquiry, a federal court was to look to the law of the appropriate state for guidance. 323 U.S. at 463, 65 S.Ct. at 350, 89 L.Ed. at 394. Our analysis of Florida law leads us to the conclusion that the first question should be answered in the negative. In view of this ruling, we do not reach the second step of the test.

Section 229.012, Florida Statutes, F.S.A., provides that the state board of education shall consist of the governor, the secretary of state, the attorney general, the comptroller, the treasurer, the commissioner of agriculture, and the commissioner of education. Pursuant to Section 229.053(2) (f), Florida Statutes, F.S.A., the board of education is instructed "to have possession of and manage all lands granted to or held by the state for educational purposes". This board's powers over state educational land are further elaborated in Section 229.061(6), Florida Statutes, F.S.A.:

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9. In so ruling, we are not unmindful of the citation of Clark v. Barnard in Mr. Justice Douglas's opinion for the Court in Petty v. Tennessee-Missouri Bridge Commission, 1959, 359 U.S. 275, 276, 79 S.Ct. 785, 787, 3 L.Ed.2d 804, 807, for the proposition that immunity can be waived by general appearance. See, also, MacDonald v. Board of Regents of the University of Michigan, 6 Cir. 1967, 371 F.2d 818.

"It shall be the responsibility of the state board to exercise all powers and perform all duties prescribed below: To obtain possession of, to hold title to, and take general charge, oversight, and management of all lands granted to or held by the state for educational purposes; to fix the terms of sale and policies relating to rental or use of such lands, and to adopt whatever policies may be necessary to preserve them from trespass or injury and to provide for their improvement."

Pursuant to Section 253.01, Florida Statutes, F.S.A., certain lands and the proceeds of the sale of such lands are set apart and declared a separate and distinct fund, called the Internal Improvement Trust Fund of the State. Section 253.02(1), Florida Statutes, F.S.A., enumerates the powers of the Board of Trustees of the Fund:

"For the purpose of assuring the proper application of the internal improvement trust fund for the purposes of this chapter, the land provided for in §§ 253.01 and 253.03, and all the funds arising from the sale thereof, after paying the necessary expense of selection, management and sale, are irrevocably vested in a board of seven trustees, to wit: The governor, the secretary of state, the attorney general, the comptroller, the state treasurer, the commissioner of education, the commissioner of agriculture and their successors in office, to hold the same in trust for the uses and purposes provided in this chapter, with the power to sell and transfer said lands to the purchasers and receive payment for the same, and invest the surplus moneys arising therefrom, from time to time, in stocks of the United States, stocks of the several states, or the internal improvement bonds issued under the provisions of law; also, the surplus interest accruing from such investments. Said board of trustees have all the rights,

powers, property, claims, remedies, actions, suits and things whatsoever belonging to them, or appertaining before and at the time of the enactment hereof, and they shall remain subject to and pay, fulfill, perform and discharge all debts, duties and obligations of their trust, existing at the time of the enactment hereof or provided in this chapter".

In Hampton v. State Board of Education, 1925, 90 Fla. 88, 105 So. 323, suit was brought against the State Board of Education and its members to compel specific performance of a contract to sell school lands. The trial court sustained the defendants' demurrer to the complaint on the basis that the suit was in actuality one against the state to which the state had not consented. On appeal, the Supreme Court of Florida affirmed.

At the time the contract to purchase in *Hampton* was executed, the Florida Statutes provided:

"The state board of education are directed and empowered:

"First. To obtain possession of and take charge, oversight and management of all lands granted to or held by the state for educational purposes, and to fix the terms of sale, rental or use of such lands, and to do whatever may be necessary to preserve them from trespass or injury, and for their improvement". Sections 601, 602, par. 1, Rev.Gen.Stats.1920.

In affirming the order of the lower court, the Florida Supreme Court declared:

"The appellees are state officers and the subject-matter of the suit is state property. *The title to the property is not in the state officers. They merely have statutory authority to sell the property.*

"This suit directly involves the property of the state. The state is the real party in interest, though the suit is nominally against state officers in their official capacity as state officials. . . . If the contract sued on is valid, it is the contract of the state". 90 Fla. at 97-98, 105 So. at 326. (Emphasis supplied)

We believe that Chapter 19355, Florida Laws, 1939, which amended what is now Section 229.061(6), Florida Statutes, F.S.A., remedied the defect which caused the Florida Supreme Court in *Hampton* to characterize that suit as one against the state. The statute as now written specifically *vests title to state school* lands in the State Board of Education.

As further support for our view, we refer to another portion of the *Hampton* opinion, in which the Court compared the powers of the State Board of Education with those of the trustees of the Internal Improvement Trust Fund:

"By chapter 610, Laws of Florida, approved January 6, 1855 (sections 1055 et seq., Revised General Statutes 1920), superseding chapter 332, Laws of Florida, approved January 24, 1851, the 500,000 acres of internal improvement lands granted to the state by Act of Congress of March 3, 1845, and the swamp and overflowed lands received by the state under the Act of Congress of September 28, 1850 (U.S. Comp.St. §§ 4958-4960), were 'irrevocably vested in five trustees' who are state officers 'and their successors in office, to hold the same in trust for the uses and purposes' stated in the act, 'with the power to sell' the lands and with directions for executing the trusts for which the lands were 'irrevocably vested' in the trustees. Under such statutory provisions, suits against the trustee state officers, with reference to the execution

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of the trust including sales of the lands and the use of the proceeds for the trust, are not suits against the state. See Trustees I. I. Fund v. Bailey, 10 Fla. 112, text page 132, 81 Am.Dec. 194. In such cases the suits are to require the due performance of duties prescribed by statute.

"By sections 602, 603, and 3798, Revised General Statutes 1920, the state retains the title to all state school lands and merely authorizes the state board of education to take possession of, to manage, to preserve, and to fix the terms of sale, and to convey the title to 'all lands granted to or held by the state for educational purposes.' Under these statutes the title remains in the state and the state officers have no title, but a mere power of agency to sell the lands, not for trust purposes of an administrative nature, but such sales are for 'the principal of the state school fund' which 'shall remain sacred and inviolate.' Sections 4 and 5, art. 12, Constitution. In view of these organic and statutory provisions, a suit brought against the state officers to enforce a contract for the sale of state school land is in effect a suit against the state, since it relates to land the title to which is in the state for the benefit of a 'sacred and inviolate' school fund, and the state has not by statute directed the contract to be made, and has not by law authorized a suit against the state." 90 Fla. at 100-101, 105 So. at 327.

As noted above, Section 229.061(6), Florida Statutes, F.S.A., presently vests title to Board of Education land in the Board and not the State of Florida.

[4] We hold that this suit does not constitute an action against the State of Florida and is, therefore, not barred by the Eleventh Amendment to the United States Constitution, as to either of the two state boards in question.

III.

Discharge by Failure of Consideration

[5] In the district court and here, the defendants have argued that the plaintiff, by discontinuing solid fuel development operations at its Dade County facilities, in June, 1967, disqualified itself from exercising its option to purchase the land pursuant to the option clause of the lease. In other words, the cessation of development activities, according to the defendants, constituted "failure of consideration". Our analysis of the lease leads us to reject the "failure of consideration" theory advanced by the defendants.

Professor Corbin, in his treatise on the law of Contracts, has this to say about the doctrine of failure of consideration:

> "In the case of a promise that is not entirely independent, the promisor may be discharged by his failure to receive the agreed equivalent for which his promised performance was to be exchanged. This is true, even though the other party has not promised in return to perform this agreed equivalent. The promisor's duty to render his performance may be either expressly or impliedly conditional upon the giving of something recognized by the parties as the agreed equivalent of that which he himself promises to do even though there is no promise by anybody in return. In such a case, if the promisor has not received and is not going to receive the agreed equivalent of his own performance, he will not be required to perform at all. There is a failure of consideration, even though there is no breach of contract. In most cases, doubtless when the parties have agreed upon an equivalent to be exchanged for a promised performance, the contract is put into a bilateral form,

with a return promise to render the agreed equivalent. In such a case failure of consideration may also be a breach of contract; and the discharge could be called a discharge by breach, as well as a discharge by failure of consideration. The failure to render a promised performance may not be a breach of contract for the reason that performance has become impossible without fault; but it is nonetheless a failure of consideration discharging the other party from his duty to make the agreed return and giving him a right to the restitution of payments already made or other benefits already conferred". Corbin on Contracts, Section 1255, Volume 6, page 21.

Under the terms of the lease, the plaintiff agreed to pay an annual rental in amount equal to $2.50 per acre, to pay to local taxing authorities amounts equal to the ad valorem taxes which would ordinarily be assessed against the property, and to grant necessary easements and rights of way to the South Florida Flood Control District. The promise which constitutes a critical aspect of this case reads as follows:

"3. The lessee herewith agrees and covenants to commence within twelve (12) months after the execution hereof, the construction and installation of a manufacturing plant and associated facilities on said land or upon lands contiguous thereto owned, leased or controlled by lessee and in so doing to utilize the aforementioned described land in conjunction with the operation of such manufacturing plant and associated facilities".

This paragraph was amended by the parties on January 14, 1963, to permit the plaintiff to commence construction of the plant no later than December 21, 1964.

The plaintiff did construct the manufacturing facilities as contemplated by the lease. When the federal government reduced its spending on solid rocket fuels, however, the plaintiff terminated its operations at the Dade County location. Once the plaintiff completed construction of the agreed-upon facilities, the defendants received all they had bargained for. The lease did not expressly or impliedly require the plaintiff to engage in solid rocket fuel development operations throughout the life of the lease as a prerequisite to the plaintiff's exercise of its option to purchase. Even if the lease and option to purchase are to be treated as inseparable aspects of one transaction, we are of the opinion that the defendants may not avoid performance on a failure of consideration theory.

Our resolution of the failure of consideration issue is buttressed by the fact that the defendants at no time prior to the attempted exercise of the option to purchase in September, 1969, gave the plaintiff the required sixty-day cure notice stipulated by the fourth paragraph of the lease. Between the time that the plaintiff curtailed its operations in June, 1967, and the time that the plaintiff attempted to exercise its option to purchase, the defendants had ample opportunity to determine that a breach had taken place and to dispatch the sixty-day cure notice. Accordingly we concur with the district court in holding that no failure of consideration took place in June, 1967.

IV.

The Grant of Specific Performance on Summary Judgment

[6] The defendants urge that it was an abuse of discretion for the district court to grant the equitable relief of specific performance without holding an evidentiary hearing. In this regard, the defendants allude to the fact

that the value of the land in question probably increased in value between 1961 and 1969, thereby raising the issue of inadequacy of consideration. Our examination of the matters presented to the district court by the defendants in opposition to the plaintiff's motion for summary judgment leads us to conclude that the court below committed no abuse of discretion in summarily granting specific performance to the plaintiff.

We note as a preliminary that specific performance may be granted on a motion for summary judgment in appropriate cases. Professor Moore observes:

> "The basic principles governing the grant or denial of summary judgment in other types of actions apply, of course, in actions for the reformation or rescission of a contract; or for specific performance, for damages, or for specific performance or in the alternative for damages of all types of contracts". Moore's Federal Practice, Section 56.17(11), page 2507.

Professor Corbin's discussion of options contains the following passages:

> "An option to buy or sell is frequently given as part of a larger contract with other purposes; and a consideration sufficient to make the option binding and irrevocable may be found in the consideration that the optionee gives in that larger contract. Thus, suppose a lease of land in which the lessee is given an option to buy at a stated price conditional on notice before termination of the lease. The promise to pay rent is the consideration both for the lessor's covenants as lessor and for his promise to sell; it is sufficient to make all the promises enforceable that are given in return for it, and the option is not revocable". Corbin on Contracts, Section 266, Volume 1A, pages 539-540.

"It has been thought that equity would not decree the specific performance of an option contract for any one of several reasons. These reasons are not sound and the remedy is available in spite of them; but they require some discussion. These reasons are absence of consideration, inadequacy of consideration, and lack of mutuality because the holder of the option is not bound to perform."

"First, suppose that A promises under seal to sell Blackacre to B for $5,000, if B gives notice of acceptance within 30 days. Secondly, suppose that the foregoing promise of A is in consideration of one dollar actually paid. These cases may be discussed together. In the first case, there is no consideration for A's promise, and in the second the consideration is a small amount. The courts of equity did not require adequacy of consideration, as measured by the general market, as a prerequisite to specific enforcement; but they frequently did say that specific enforcement would be denied if the consideration was so grossly inadequate as to shock the chancellor's conscience and lead to the conclusion that there had been fraud or unfair dealing. Accepting this doctrine at its face value, it does not prevent specific enforcement of either of the option contracts supposed above. The purpose of the doctrine is to prevent fraud and unfair dealing and to prevent one person from acquiring the property of another for nothing or for a shockingly inadequate return. In the present cases, there is no unfair dealing and the option contract does not purport to require A to convey Blackacre for nothing or for one dollar. The agreed price is $5,000; and unless that is shown to be shockingly inadequate, the chancellor's conscience will be quite at ease. The decree compelling A to convey will be made conditional on B's payment of $5,000 into court; or, if the option

agreement provided for deferred payment, conditional upon giving sufficient security". Corbin on Contracts, Section 269, Volume 1A, pages 557-558.

In discussing contracts for the sale of land, Professor Corbin states:

> "The purchaser's remedy in damages for breach of contract to transfer land or an interest therein is practically never regarded as so complete and adequate as to preclude specific enforcement". Corbin on Contracts, Section 1143, Volume 5A, page 126.

The Florida jurisprudence is in harmony with the above-quoted excerpts from the Corbin treatise. In Charbonier v. Arbona, 1912, 63 Fla. 384, 57 So. 887, the Supreme Court of Florida held that equity will specifically enforce a contract for the sale of land when the price is a fair one when the contract was made and no advantage has been taken of the defendant. In *Charbonier*, the defendant, in March, 1910, for a consideration of $100 in cash, gave the plaintiff an option to buy the defendant's land for $5,000 within six months. The option was exercised before the end of the six month period and specific performance was decreed even though the value of the property had substantially increased.

In Bigman v. University Federal Savings and Loan Association, 1965, Fla.App.3rd, 170 So.2d 330, 331, the Court noted:

> "The optionee [for consideration] during the term of his option has a right that the option giver shall not repudiate nor make performance impossible or more difficult, and said right is enforceable by all the usual judicial remedies including judgment for damages, injunction and decree for specific perfo.mance."

Paragraph 8 of the lease gave the plaintiff the option to purchase all the land described in the instrument "at any time within the ten (10) year lease period at and for a price of Fifty Dollars ($50.00) per acre". The defendants presented to the district court no reason to characterize the option purchase price as unreasonable or inequitable at the time the lease was executed. We find no reason to suppose that the defendants' predecessors were so inexperienced or uninformed in 1961 that the present defendants should be insulated from a decree of specific performance.

V.

Defendants' Authority to Grant the Option

[7, 8] On this appeal, the defendants argue that their predecessors in office were without power in 1961 to grant the plaintiff an option to purchase exercisable within the ten year term of the lease. The thrust of this argument is that the pertinent Florida statutes do not specifically empower the State Board of Education or the Board of Trustees of the Internal Improvement Trust Fund to include an option to purchase real property within a lease. Defendants in this connection cite no Florida decisions but refer us to rulings of courts in Texas, Georgia, and Mississippi.[10]

Plaintiff, in contending that the predecessors of the defendants had sufficient authority in 1961 to grant an option to purchase within the ten year lease period, points to the absence of Florida decisions on this point and to the long established practice on the part of the State Board of

10. Potter County v. C. C. Slaughter Cattle Co., 1923, Tex. Civ.App., 254 S.W. 775; Adler v. Adler, 1961, 216 Ga. 553, 118 S.E.2d 456; American Oil Company v. Marion County, Miss.1939, 187 Miss. 148, 192 So. 296.

Education and the Internal Improvement Trust Fund of including renewal options in leases. It also urges that the statutory powers granted the State Board of Education and the Internal Improvement Trust Fund are sufficiently broad to encompass the power to grant an option to purchase within a lease instrument, as well as to sell.

Defendants' argument on this point is not persuasive. As officials of the State of Florida, the defendants are of course limited to activities that are within their statutory authority, but we believe that the predecessors of the defendants did not, in 1961, exceed their warrants by executing the lease which serves as the basis for this lawsuit.

We recognize the obligation of the defendants to safeguard an asset of the State of Florida—land—which is in increasingly short supply. The defendants nevertheless clearly have a duty to deal fairly with those with whom they have contracted. As a matter both of statutory construction and of good faith and fair dealing, we conclude that the defendants should not prevail on the issue of authority to grant an option to purchase the land covered by the lease.

VI.

The Sufficiency of the Notice

The defendants argue on this appeal that the notice published in the Homestead News in September and October, 1961, did not conform to the Florida competitive bidding

statutes, Sections 270.07, 270.08 and 270.09, Florida Statutes, F.S.A.,[11] in that the portions dealing with the construction of

11. "270.07 Certain public lands not to be sold without advertisement

No lands in the state that are now, or may hereafter be, vested in the board of trustees of the internal improvement trust fund of the state, or the state board of education, shall be sold, conveyed or disposed of by the said board of trustees or by the said board of education until notice by publication shall have been given for the full term of thirty (30) days prior to such sale; provided, that this section shall not apply to homestead, railroad or canal grants, as now provided for by law nor to any conveyance pursuant to the provisions of § 253.111.

"270.08 Notice of sale of public lands by advertisement

When the board of trustees of the internal improvement trust fund, or the state board of education shall decide or regard it expedient to sell any of the lands that are now, or may hereafter be, vested in the board of trustees of the internal improvement trust fund of the state, or in the state board of education, they shall give thirty (30) days' notice of such sale, by publication in some newspaper published in the county or counties where such lands to be sold are situated, and also, such other papers as may be deemed advisable, once each week; which said notice shall contain a description of the lands, state the terms of sale, the time and place where such lands shall be sold, and notify the people that they will receive bids therefor at Tallahassee, from the time of giving such notice until the day of sale. In case said board of trustees is making the sale, they shall require the persons publishing said notice to file with it immediately after the expiration of the time of such sale, proof of said publication, which shall, at all times, be subject to inspection by any person desiring to see same. And in case the said state board of education is proceeding to make such sale, it shall likewise require such persons publishing said notice to file with it, immediately after the expiration of the time of said sale, proof of said publication, which shall at all times be subject to inspection by any person desiring to see same. None of the provisions of this section shall limit the applicability of § 253.111.

"270.09 Bids to purchase public lands; sale to highest bidder; proviso, etc.

After the notice referred to in § 270.07 shall have been issued, any person shall have the privilege of filing with the trustees of the internal improvement trust fund, if they be making the sale, or with the state board of education, if it be making the sale, a bid or written proposition to purchase said lands; and same shall not be opened until the day of sale provided in said notice, at which time all bids shall be opened in the presence of the said trustees, if they be making the sale, or in the presence of the state board of education, if it be making the sale, at the office of the said trustees or the board of education making the sale, as the

manufacturing facilities were fatally indefinite. In arguing that these portions rendered it impossible for the appropriate public officials to make exact comparisons of the bids, defendants-appellants assert in their brief:

> "In order for the bidders to be on a parity and in order for comparisons to be made as to which bid would be the highest and best and in order for the bidder to understand the nature and character of the obligation he is required to assume, it was essential and necessary that the notice contain a complete and detailed description of the proposed manufacturing plant and associated facilities to be installed and constructed. No one could possibly ascertain from this notice the size, cost, or purpose of 'a manufacturing plant and associated facilities' from anything that was contained in said notice. It was within the power of the trustees to include a covenant, if one bidder was successful, which might require a manufacturing plant and associated facilities costing hundreds of millions of dollars, but, if another and favored bidder was the highest, the board could insert a covenant requiring the installation and construction of a manufacturing plant and associated facilities costing only a few thousand dollars.

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case may be, in Tallahassee, at which time any person so desiring may be present. And the said trustees, if they be making the sale, or the said state board of education, if it be making the sale, shall sell to the highest bidder, upon satisfactory terms, for cash or otherwise, as they may determine, the lands advertised as prescribed in § 270.07, and shall make, execute and deliver a deed or deeds to the purchaser or purchasers of such lands, in the manner now provided by law and in accordance with the terms agreed upon.

A record of all such sales and proceedings shall be kept by the said trustees, if they be making the sale, or by the said state board of education, if it be making the sale, which shall at all times be subject to inspection by any and all persons; provided, that all bids may be rejected if the price offered is not satisfactory to those making the sale; and provided further, that §§ 270.06—270.08 and this section shall not apply where the quantity of land sought to be sold does not exceed a half section of land."

Nothing could be plainer than that this was a notice for bids aimed to assure Aerojet it would get the property. This flies directly in the teeth of the competitive bidding statute and renders the option to purchase invalid and unenforceable." (Appellants' supplemental brief, page 23)

[9] We regard it as significant that, despite appellants' intimation that the claimed ambiguity of the notice for bids was designed to assure the plaintiff that it would get the property, they fail to allege any fraud, favoritism, collusion, or corruption between Aerojet and the defendants' predecessors in office. In the absence of such allegations, Florida jurisprudence will not permit the defendants to escape performance because of the claimed inadequacy of the notice for bids.

In the leading case of Wester v. Belote, 1931, 103 Fla. 976, 138 So. 721, the Florida Supreme Court refused to enjoin Duval County from paying a vendor of merchandise. In so doing, the Court rejected the contention of the taxpayer-plaintiff that the invitation for bids was defective in that it was not reasonably definite. After stating that contracts awarded in a manner which did not comply with the competitive bidding statutes were to be considered null and void, the Court cautioned:

"But it by no means follows that a competitively awarded contract must in every instance be set aside, and payments under it enjoined, at the suit of a citizen and taxpayer, because of insufficient specifications embraced in the advertisement for bids, where what has been done by the board appears to have been done as a result of a bona fide effort on the county commissioners' part to comply with the statute, *and no actual fraud, misconduct, favoritism, prejudice, or discrimination is charged with reference to the transaction as*

completed." 103 Fla. at 987-988, 138 So. at 726. (Emphasis supplied)

Although the *Wester* case involved the complaint of a taxpayer against the payment by a county board to a vendor under a public advertisement to bid whereas we deal here with the refusal of successor trustees to convey real property to Aerojet, a successful bidder for that right, we nevertheless find the above quoted excerpt from the *Wester* opinion of compelling application to this case. At this late date, after the plaintiff has in good faith made the required payments and dispatched the required notices of election necessary to exercise its option to purchase, we hold that Aerojet is entitled to prevail in the absence of specific charges of "actual fraud, misconduct, favoritism, prejudice, or discrimination". *Wester,* supra.

For the reasons we have outlined, the judgment and decree of the district court are

Affirmed.

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

PER CURIAM:

The Petition for Rehearing is denied and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35 Federal Rules of Appellate Procedure: Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is denied.

APPENDIX "C"

IN THE UNITED STATES COURT OF APPEALS,
IN AND FOR THE FIFTH CIRCUIT

CASE NO. 31018

AEROJET-GENERAL CORPORATION,
Plaintiff-Appellee,

vs.

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida; STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND; and STATE OF FLORIDA BOARD OF EDUCATION,
Defendants-Appellants.

Motion to Remand the Cause with Leave to File Motion to Set Aside Judgment in the Lower Court

The Defendants-Appellants file this motion for a remand of this cause with leave to move the lower court to vacate the judgment rendered in this cause upon the ground of newly discovered evidence and for such motion the Defendants-Appellants allege:

1. The majority of the members of the Board of Trustees of the Internal Improvement Trust Fund and the Florida State Board of Education were elected for their first term and took office and assumed the duties thereof on January 5, 1971. At the time the new Trustees assumed their duties, none of them were familiar with the facts and circumstances surrounding the transaction involving the alleged option of the Plaintiff-Appellee to purchase approximately 25,313 acres of public land, a part of the public domain of the State of Florida. Under Chapter 15,642 of the Laws of 1931, the provisions of which are now carried forward in Chapter 253.03 of the Florida Statutes, the Legislature of the State of Florida charged the

Trustees of the Internal Improvement Trust Fund of the State of Florida "with the administration . . . *conservation* and *protection* . . . of all lands" owned by the State of Florida, and in said act the Trustees were authorized "to take such other action or to do such other things as may in the judgment of such Trustees be necessary for the full protection and conservation of said lands." The Trustees deemed it their legal and moral duty, under the oath taken by them as such officers, to decline to convey the public lands to private persons under an illegal or unauthorized contract. In fact it would be illegal and immoral and malfeasance to convey away the public domain under such circumstances.

2. Since the submission of this cause, certain facts have developed which militate against the exercise by the lower court of its discretion to grant the discretionary remedy of specific performance and which facts render the granting of such relief, especially on summary judgment, inequitable. The exercise by the lower court of its discretion in this cause, in view of the public rights involved, should not occur until each, every and all of the facts and circumstances surrounding the execution of the alleged option contract have been presented.

3. From the record in this cause it appears that not since the creation of the Trustees of the Internal Improvement Trust Fund or the Florida Board of Education, spanning more than 100 years, has either board ever granted an option to purchase public land held by them in trust for the use and benefit of the public, except the alleged option in the cause sub judice, which forms the basis of the suit for specific performance. (See, Appendix to Appellee's Supplemental Brief, pages 2-207). This establishes that for more than 100 years the administrative interpretations of the powers of said boards negated the

right or power to grant an option to purchase public land. At the time that the option to purchase the State's 25,313 acres of public land at $50 an acre for the extended term of 10 years was executed by the statutory Trustees, the Plaintiff-Appellee had already entered into an option contract with the Arvida Corporation for the purchase of 24,516 acres of land for a term of 5 years at an average option price per acre of three and one-half times that fixed in the option to the State lands. The Arvida option was subsequently exercised within said 5-year period and the Plaintiff-Appellee paid approximately $4,391,000 for the 24,516 acres of land. A true copy of the conveyance from Arvida dated June 20, 1967 is hereto attached, marked Exhibit A, and made a part hereof. (The foregoing information was supplied by the Annual Stockholders' Report of Arvida for the year 1967 and from the stamps appearing on the deed.)

4. Moreover, the Plaintiff-Appellee acquired an option to purchase on August 22, 1961 from Sam Simonhoff, et al., Section 11, the West ½ and the Northeast ¼ of Section 15; the West ½ and the Northeast ¼ of Section 17, and all of Section 18, Township 59 South, Range 38 East, Dade County, Florida, comprising 2247 acres, for a purchase price of $150 per acre with an option term of 180 days. This option was exercised and the deed was delivered on the 9th day of April, 1962. A true copy of said deed is hereto attached, marked Exhibit B, and made a part hereof. (This information was furnished by Sam Simonhoff.) This option pre-dated the application of Aerojet to procure an option on the State lands and was closed within three and one-half months of the execution of the State option. The purchase price paid per acre was three times the option price procured by Aerojet from the State for the purchase of the State lands with an option term of ten years.

Aerojet, pursuant to a prior option, purchased from Joe Greenfield on April 13, 1962, all of Section 1, the North 1/2 of Section 12, Township 59 South, Range 38 East, comprising 960 acres at and for the purchase price of $150 per acre. A true copy of said conveyance is hereto attached, marked Exhibit C, and made a part hereof. (The purchase price is computed from the stamps appearing on the deed.)

Pursuant to a prior option granted to Aerojet, the Flagler Tract, Inc. on May 21, 1962, sold to Aerojet all of Sections 2, 3, 4, the East 1/2 of Section 5, and all of Sections 7, 8, 9 and 10 and 14, Township 59 South, Range 38 East, and all of Sections 6 and 18, Township 59 South, Range 39 East comprising a total of 6,739.61 acres, at and for the purchase price of $150 per acre. (The purchase price is computed from the stamps appearing on the deed.) A true copy of said conveyance is hereto attached, marked Exhibit D, and made a part hereof.

6. The Trustees believe that the Arvida, Simonoff, Greenfield and Flagler Tract, additional lands for which Aerojet had procured options to purchase at or prior to the time it procured the option on the State lands, were worth materially less than the State land. These purchases at a price three times the option price of the State lands indicates that the Plaintiff-Appellee was conscious of the fact that the ten-year option to purchase 25,313 acres of State land at a price of $50 per acre was indeed a "sweetheart contract".

7. At or prior to September 12, 1961, the Plaintiff-Appellee made its application to the statutory public Trustees of the State of Florida for the lease of the State lands and for a ten-year option to purchase said 25,313 acres of the public's land. In said application it appears that the Plaintiff-Appellee fixed the terms and conditions under

which it would contract. These conditions were adopted by the Trustees and these terms and conditions were contained in the notice for public bids. These terms and conditions rendered Aerojet the only potential bidder. (See, Supplemental Appendix of Appellee pages 39, 40 and 41) The Plaintiff-Appellee, having thus fixed the conditions and terms, became the favored bidder, favored to such an extent that for all practical purposes, under the notice for bid, it would be the only bidder. It was fully aware of the statutory power of the public's Trustees at the time it sought by said application to induce the Trustees to grant the ten-year option for the purchase of said land at $50 an acre.

8. In the contract involved, Aerojet represented that it needed "these State lands for the purpose of establishing a manufacturing plant and associated facilities to be used in the production activities which are designed to strengthen the defense posture of the United States." This representation is inaccurate in that the entire Township 58 South, Range 37 East, consisting of 36 Sections of the public land included in the option to purchase and consisting of approximately 23,040 acres of land, is located from 9 to 13 miles from the manufacturing plant and associated facilities. The recital in said option that "the best interests of the people of the State of Florida will be served by said State land being devoted to such usage" (Appellants' Appendix 40) is inaccurate because 23,040 acres (entire township) of the land is so totally remote and such a vast distance from the Appellee's manufacturing plant and associated facilities that it could hardly be considered reasonably likely that such land would be "devoted to such usage" or serve the "best interests of the people of the State of Florida"; but such recitals aided in the palliation of the public.

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9. Paragraph numbered 3 of the lease with option to purchase is a covenant by the Appellee, Aerojet, expressing its purported intent to commence the construction of a manufacturing plant, and in so doing to utilize the 25,313 acres of State land in conjunction with the operation of its manufacturing plant and associated facilities. That covenant reads: (Appellants' Appendix 43)

> "3. The Lessee herewith agrees and covenants to commence within twelve (12) months after the execution hereof, the construction and installation of a manufacturing plant and associated facilities on said land or upon lands contiguous thereto owned, leased or controlled by Lessee and in so doing to utilize the aforementioned described land in conjunction with the operation of such manufacturing plant and associated facilities."

That representation and covenant by Aerojet was inaccurate, unperformed and literally unsusceptible of performance, in that the entire township comprising the 23,040 acres of land from its location as shown by the map attached hereto and made a part hereof as Exhibit E, could hardly be utilized in connection with the operation of a manufacturing plant and associated facilities. Only 960 acres of land of the State, which is Section 6 and the West ½ of Section 5 of Township 59 South, Range 38 East, was intended to be and was utilized in conjunction with the operation of said manufacturing plant and associated facilities, and said 960 acres of land is 13 miles from the 23,040 acres consisting of Township 56 South, Range 37 East. The manufacturing plant of Aerojet-General was placed on Section 19, Township 58 South, Range 38 East, which is 9 miles from the said township of 23,040 acres of State public land, as shown by petition filed by Aerojet with the Dade County Equalization

Board, a true copy of which is hereto attached, marked Exhibit F, and made a part hereof.

10. The Plaintiff-Appellee has urged and contended that it has spent over $2,000,000 in the construction of buildings and machinery on State land, carrying the implication that these improvements have greatly increased the value of the State land and the refusal to require the conveyance of these lands would, therefore, irreparably injure the Plaintiff-Appellee. This position is belied by the affidavit of E. E. Nelson, Manager of the Plaintiff-Appellee, which was filed on July 22, 1968, by the Appellee before the Board of Equalization of Metropolitan Dade County, Florida. Aerojet's sworn petition sought the reduction of taxes on the West ½ of Section 5, Township 59 South, Range 38 East. These are 320 acres leased by the State to Aerojet and included in the option. They are isolated from the 23,040 acres (36 Sections) township of State land by 13 miles. On these 320 acres, Aerojet dug a 176 foot excavation called a test caisson, which it contends in its petition cost it $2,131,249.48. Its petition showed it also placed on said 320 acres a building costing $168,008.85. A copy of said petition is attached hereto, marked Exhibit G, and made a part hereof. The Plaintiff-Appellee complains in said petition that it was assessed for these 320 acres of land and the improvements thereon, $1,052,820.00. Its officer makes oath in said petition that said improvements were of a value and were worth only $57,134 and that the total value of land and improvements was only $94,774.00. This petition eliminated as totally worthless and valueless the hole in the ground called a test caisson. On the strength of this sworn petition as to value the Plaintiff-Appellee procured from the Board of Equalization a reduction of valuation to $139,120 which included land, building, and the hole in the ground. Moreover, an adjoining Section, Section 6, Township 59

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South, Range 38 East, which was State land included in the option and which also is separated from the 36 Sections in the township of State land by a distance of 13 miles, was assessed $144,740 for land, buildings and improvements. The building it appears cost $218,063.98. In this sworn petition the Plaintiff-Appellee placed the value of the building at $20,210 and it procured a reduction for land and building on the strength of its affidavit to $116,-430.00. A true copy of said petition is hereto attached, marked Exhibit H, and made a part hereof. The alleged investment of over $2,000,000 on State lands was confined solely to the 960 acres and does not constitute an equity in favor of Aerojet entitling the Plaintiff-Appellee to purchase the township of land 13 miles away from the said 960 acres, all totally disconnected from and unrelated to said improvements.

11. The township of approximately 23,040 acres of land does not and never did act as a buffer to insulate the residents of Dade County from the noise and activity of the Aerojet plant, for the said township of State land is from 9 to 13 miles north and slightly west of the manufacturing plant and associated facilities and does not lie between the Aerojet plant and residents of Dade County, Florida.

12. At the time that said ten-year option to purchase the State land at $50.00 an acre was granted, said price was totally inadequate at the date of the option. Thousands of acres of comparable land were purchased by Aerojet at a price of $150 an acre under options which were granted and obtained prior to the execution of the State option. In the Simonoff option to purchase, above referred to, Aerojet masked its activities by that option in the name of an individual totally unassociated with Aerojet, who assigned the option to Aerojet after the ex-

ecution of the State option. The Trustees believe that Aerojet took options on all of said lands above referred to in the name of individuals who assigned the options to Aerojet, after it had procured the State option. The price of the land of $50 an acre and the term of the option, ten years, in view of the circumstances and the activities of Aerojet at the time of the execution of the option, renders the price and terms of this option contract shocking and unconscionable.

13. The Trustees believe that Aerojet had 45,000 acres of land under option at the time it made its representations to the State that the township of State land of approximately 23,040 acres was needed for its manufacturing plant and associated facilities. Said township of State land was not essential or needed for the Plaintiff-Appellee's manufacturing plant and associated facilities. Said 45,000 acres were ample for Aerojet's purpose.

WHEREFORE, the State of Florida Board of Trustees of the Internal Improvement Trust Fund and the State of Florida Board of Education, pursuant to the duty imposed upon them by law to conserve and protect said lands and to discharge their public trust in connection therewith, request the United States Court of Appeals, Fifth Circuit, to remand this cause in order that the facts set forth in this petition and other related facts surrounding the execution of the alleged option may be presented to the lower court to insure that substantial justice is done. *Youngstown Sheet & Tube Co.* v. *Lucey Products Co.*, 403 F. 2d 135, 5 Cir., 1968. And, that leave be granted permitting the Trustees to seek an order vacating the judgment of the lower court upon the grounds herein set forth so that the facts and circumstances surrounding this transaction may be considered by the court in the exercise of its discretion, including the paramount public interest involved.

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Seaboard Airline Ry. Co. v. *Atlantic B. & C. R. Co.*, 35 F. 2d 609, 5 Cir. 1929.

Respectfully submitted,

State of Florida Board of Trustees of the Internal Improvement Trust Fund and State of Florida Board of Education

By: Reubin O'Donovan Askew, Governor of the State of Florida

Robert Shevin, Attorney General of the State of Florida, Counsel for the State of Florida Board of Trustees of the Internal Improvement Trust Fund, and Counsel for the State of Florida Board of Education, Defendants-Appellants

The Capitol

Tallahassee, Florida 32304

Marion E. Sibley, Special Assistant Attorney General appointed to appear for the Defendants-appellants solely in this cause

605 Lincoln Road

Miami Beach, Florida 33139

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and complete copy of the above and foregoing Motion to Remand the Cause with Leave to File Motion to Set Aside Judgment in the Lower Court was on this ..... day of January, 1972, mailed to George W. Wright, Jr., 1600 First National Bank Building, Miami, Florida 33131, Attorney for appellee, Aerojet-General Corporation.

.....

Attorney General, State of Florida.

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Exhibit A

(Filed for Record June 23, 1967
As Clerk's File No. 67R96942)

WARRANTY DEED (FROM CORPORATION TO CORPORATION) OFFICIAL FORM 33-A MIAMI 48 FLORIDA

Warranty Deed

This Indenture, Made, this 20th day of June A. D. 19 67

BETWEEN ARVIDA CORPORATION

, a corporation existing under the laws of the State of Delaware having its principal place of business in the County of Dade and State of Florida and lawfully authorized to transact business in the State of Florida, party of the first part, and AEROJET-GENERAL CORPORATION (P. O. Box 368, Homestead, Florida) a corporation existing under the laws of the State of Ohio , having its principal place of business in the County of Summit and State of Ohio and lawfully authorized to transact business in the State of Florida, party of the second part,

WITNESSETH: That the said party of the first part, for and in consideration of the sum of Ten ($10) and other valuable consideration Dollars to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said party of the second part, its successors and assigns forever, the following described land situate, lying and being in the County of Dade and State of Florida, to-wit:

Lands situate in Dade County, Florida, described as Parcels 1, 2, ,3 and 5, on attached Exhibit consisting of 4 pages.

SUBJECT TO:

(i) Taxes for the year 1967 and subsequent years;

(ii) Reservations of record in favor of Trustees of the Internal Improvement Fund of the State of Florida.

(iii) Rights of way for public roads.

(iv) Drainage reservations of record in favor of Board of Commissioners of Everglades Drainage District now held by Central and Southern Florida Flood Control District.

(v) Right of way flood control dike (L-31).

(vi) Easements for public utilities.

(vii) Oil, gas and mineral rights and interests held by parties other than party of the first part under various instruments of record.

(viii) Oil, gas and mineral leases, if any, of record.

(ix) Purchase money mortgage executed by party of the second part to party of the first part encumbering Parcels 1 and 2 of the lands hereby conveyed, in the principal sum of $1,566,091.11.

(x) Purchase money mortgage executed by party of the second part to party of the first part encumbering Parcels 3 and 5 of the lands hereby conveyed in the principal sum of $1,727,062.50.

And the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

In Witness Whereof, *the said party of the first part has caused these presents to be signed in its name by its proper officers, and its corporate seal to be affixed, attested by its Secretary, the day and year above written.*

ARVIDA CORPORATION

Attest: _____ By _____

Assistant Secretary — Senior Vice-President.

Signed, sealed and delivered in the presence of us:

_____

_____

State of Florida,

County of DADE

I Hereby Certify, *that on this* 20th *day of* June *A. D. 19* 67, *before me personally appeared* Frank M. Steffens *and* William G. Baker, Senior Vice-President *and* Assistant *Secretary respectively of* ARVIDA CORPORATION, *a corporation under the laws of the State of* Delaware, *to me known to be the persons who signed the foregoing instrument as such officers and severally acknowledged the execution thereof to be their free act and deed as such officers for the uses and purposes therein mentioned and that they affixed thereto the official seal of said corporation, and that the said instrument is the act and deed of said corporation.*

Witness *my hand and official seal at* Miami *in the County of* Dade *and State of* Florida *the day and year last aforesaid.*

_____ (Seal)

Notary Public

State of Florida at Large

My Commission Expires: July 18, 19

NOTARY PUBLIC, STATE of FLORIDA at LARGE
MY COMMISSION EXPIRES JULY 18, 1969
BONDED THRU FRED W. DIETZ-HOMEST

8/ar

Warranty Deed

(FROM CORPORATION TO CORPORATION)

FROM

TO

Dated

ABSTRACT OF DESCRIPTION

Filed for Record the _____ day of _____, 19__, and recorded in the Public Records of _____ County, Florida, in Official Records Book _____, Page _____.

_____ Clerk

By _____, D.C.

OFFICIAL LEGAL FORMS MIAMI 48 FLA

OFFICIAL FORM 1975

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EXHIBIT, consisting of 4 pages, describing lands conveyed by Arvida Corporation, a Delaware corporation to Aerojet-General Corporation, an Ohio corporation by deed dated June 20, 1967

LANDS IN THE COUNTY OF DADE, STATE OF FLORIDA, TO WIT:

PARCEL 1: Sections 19, 20, 21 and 22, Township 58 South, Range 38 East;

Less and except from said Sections 21 and 22, the following property described as Parcels 34 and 35 in special warranty deed from Arvida Corporation to Central and Southern Florida Flood Control District, filed April 18, 1966, under Clerk's File No. 66R-57256 of the Public Records of Dade County, Florida:

Beginning at a 1½" pipe in concrete marking the Northwest Corner of said Section 22, bear North 89°49'22" East, along the North line of said Section 22, a distance of 92.00 feet; thence South 0°25'00" East a distance of 4814.62 feet; thence North 37°15'58" West, a distance of 300.18 feet; thence North 0°25'00" West, a distance of 4574.37 feet to the intersection thereof with the North line of said Section 21; thence North 89°18'57" East, along said North line, a distance of 88.00 feet to the point of beginning; containing 8.55 acres in Section 21 and 10.85 acres in Section 22, both more or less.

Sections 23 and 24, Township 58 South, Range 38 East;

Less and except from said Section 24, the following:

A tract or parcel of land lying in the NE¼ of Section 24, Township 58 South, Range 38 East, Dade County, Florida, more particularly described as follows:

For a point of reference, commence at the Iron Pipe on the Northeast Corner of said Section 24; thence South 89°26'14" West along the North line of said Section 24, a distance of 2040 feet to a point; thence South 0°33'46" East 200 feet to the point of beginning. From the point of beginning continue South 0°33'46" East, 1380 feet to a point; thence North 89°26'14" East, 1380 feet to a point; thence South 0°33'46" East, 220 feet to a point; thence South 89°26'14" West, 1600 feet to a point; thence North 0°33'46" West, 1600 feet to a point; thence North 89°26'14" East, 220 feet to the point of beginning, containing 15.05 acres, more or less.

A tract or parcel of land lying in the NE¼ of Section 24, Township 58 South, Range 38 East, Dade County, Florida, more particularly described as follows:

For a point of reference, commence at the Iron Pipe on the Northeast corner of said Section 24; run thence South 89°26'14" West along the North line of said Section 24, a distance of 660 feet to a point; thence South 0°33'46" East, 200 feet to the point of beginning; from the point of beginning continue South 0°33'46" East, 1380 feet to a point; thence South 89°26'14" West, 1380 feet to a point; thence North 0°33'46" West, 1380 feet to a point; thence North 89°26'14" East, 1380 feet to the point of beginning, containing 43.72 acres, more or less.

A tract or parcel of land lying in the NE¼ of Section 24, Township 58 South, Range 38 East, Dade County, Florida, more particularly de-

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For a point of reference, commence at the Iron Pipe on the Northeast corner of said Section 24; thence run South 89°26'14" West along the North line of said Section 24, a distance of 1,219.85 feet to a point; thence run South 0°33'46" East, 35 feet to the Southerly right of way line of an existing road, the point of beginning; from the point of beginning, continue South 0°33'46" East 165 feet to a point; thence South 89°26'14" West, 110 feet to a point; thence North 0°33'46" West, 165 feet to a point in the Southerly right of way line of an existing road; thence North 89°26'14" East along the Southerly right of way line of said road, 110 feet to the point of beginning, containing 0.42 acre, more or less.

Also, less and except the following described property:
The South 65 feet of the North 70 feet of the East 1559.87 feet of Section 24, Township 58 South, Range 38 East, in Dade County, Florida; EXCEPT the West 110 feet of the East 1329.85 feet of the South 35 feet of the North 70 feet of said Section 24; containing 2.26 acres, more or less; as described in special warranty deed from Arvida Corporation to the State of Florida, dated December 7, 1965, recorded in Official Records Book 4871 at page 3 of the Public Records of Dade County, Florida.

Sections 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36, all in Township 58 South, Range 38 East;

Less and except therefrom those portions of Sections 20, 21, 22, 27, 28, 33 and 34, Township 58 South, Range 38 East, conveyed to Central and Southern Florida Flood Control District by Deeds from Arvida Corporation and Aerojet-General Corporation filed February 24, 1966 under Clerk's File Nos. 66R-31403 and 66R-31407, respectively;

Also less and except a parcel of land in Sections 33 and 34, Township 58 South, Range 38 East, Dade County, Florida, being more specifically described as follows: Beginning at the Southeast (SE) corner of said Section 33, the coordinates of which are X-656,757.83 and Y-362,612.16; thence bear South 89°38'56" West, along the South line of said Section 33, a distance of 112.83 feet; thence, due North, a distance of 98.53 feet; thence due East, a distance of 350.00 feet; thence, due South, a distance of 96.39 feet to the intersection thereof with the South line of said Section 34; thence South 89°38'56" West, along said South line of Section 34, a distance of 237.17 feet to the point of beginning, containing 0.26 acre in Section 33 and 0.52 acre in Section 34, both more or less.
The bearings and coordinates in the above description refer to the standard plane rectangular coordinate system for the East Zone of Florida.

Section 31 and that part of Sections 19, 29, 30 and 32, lying West of U.S. Highway No. 1, Township 58 South, Range 39 East;

Less and except the South 65 feet of the North 70 feet of Section 19, Township 58 South, Range 39 East, lying West of the West right of way line of State Road 5 (U.S. 1) in Dade County, Florida, containing 6.59 acres, more or less, as described in special warranty deed from Arvida Corporation to the State of Florida, dated December 7, 1965, recorded in Official Records Book 4871 at page 3 of the Public Records of Dade County, Florida.

PARCEL 2: All of Section 8, Township 59 South, Range 39 East, lying West of the West line of U.S. Highway No. 1;

Less the following described parcel: A tract of land lying and being in Section 8, Township 59 South, Range 39 East, Dade County, Florida, more particularly described as follows: Beginning at a point which is 600 feet North of the South boundary of Section 8, Township 59 South,

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Range 39 East, and 75 feet West of the center line of the former Florida East Coast Railroad Company main line track, said center line also being the center line of the present (1955) pavement of U. S. Highway No. 1 otherwise known as State Road No. 5, and said 75 feet being the acknowledged width of the right of way of said U. S. Highway No. 1 from the above mentioned center line to the Southwesterly boundary of said right of way, thence run West parallel with the South boundary of said Section 8, a distance of 700 feet to a point; thence run South on a line perpendicular to said South boundary of said Section 8, a distance of 600 feet to a point on said South boundary of Section 8; thence run East along said South boundary of Section 8, a distance of 817.67 feet to a point on said Southwesterly right of way line of U. S. Highway No. 1; thence run Northwesterly along the said Southwesterly right of way line of U. S. Highway No. 1, a distance of 611.43 feet to the point of beginning.

PARCEL 3: Sections 6, 7, 18, 19, 30 and 31, Township 56 South, Range 38 East;

All of Section 6; Section 7, less the East 1/4; Section 18, less the East 1/2 of the $NE\frac{1}{4}$ and the $W\frac{1}{2}$ of the $SE\frac{1}{4}$; Section 19, less the East 1/2 of the $NE\frac{1}{4}$; Section 30, less the West 1/2 of the $SW\frac{1}{4}$; and all of Section 31, Township 57 South, Range 38 East;

Sections 6, 7 and 18, Township 58 South, Range 38 East;

Less and except therefrom those portions of Sections 6, 7 and 18, Township 58 South, Range 38 East, and Sections 19, 30 and 31, Township 57 South, Range 38 East, conveyed to Central and Southern Florida Flood Control District by Deeds from Arvida Corporation and Aerojet-General Corporation filed February 24, 1966, under Clerk's File Nos. 66R-31403 and 66R-31407, respectively.

Less and except therefrom those portions of Sections 18, 19, 30 and 31, Township 56 South, Range 38 East, and Sections 6 and 7, Township 57 South, Range 38 East, conveyed to Central and Southern Florida Flood Control District by Deeds from Arvida Corporation and Aerojet-General Corporation filed May 5, 1966, under Clerk's File Nos. 66R-72933 and 66R-72951, respectively.

Less and except therefrom those portions of the West 1/2 of the $SE\frac{1}{4}$ of Section 7, and the West 1/2 of the $NE\frac{1}{4}$ of Section 18, Township 57 South, Range 38 East, conveyed to Central and Southern Florida Flood Control District by Deeds from Arvida Corporation and Aerojet-General Corporation, filed May 5, 1966 under Clerk's File Nos. 66R-72937 and 66R-72949, respectively.

Less and except therefrom those portions of Sections 6 and 7, Township 58 South, Range 38 East which falls within the following:

A strip of land 100 feet wide which lies within 50 feet each side of the Baseline of Survey for State Road 27, Section 87160-2503, in parts of Sections 5, 6, 7 and 8, Township 58 South, Range 38 East, Dade County, Florida, said Baseline of Survey more particularly described as follows:

Commence at the Section corner common to said Sections 5, 6, 7 and 8 run North 89°29'00" East, a distance of 541.49 feet along the Section line common to said Sections 5 and 8 to the Point of Beginning; thence South 89°29'00" West, a distance of 541.49 feet along that part of said Baseline

of Survey for said State Road 27 (being a part of the line common to said Sections 5 and 8) to the Northeast corner of said Section 7; thence North 89°56'56" West, a distance of 378.34 feet along the Baseline of Survey (North line of said Section 7) to the beginning of a curve to the left; thence, Westerly and Southerly along the arc of said curve having a radius of 1273.24 feet through a central angle of 25°31'12" an arc distance of 567.11 feet to the end of said curve; thence South 64°31'52" West, a distance of 413.06 feet to the END of said Baseline of Survey, less the existing right of way for Central and Southern Florida Flood Control District Canal 111, Section 3, and less the existing right of way for State Road No. 27.

Less and except therefrom the following:

The North 1/2 of the $NE\frac{1}{4}$ and the East 1/2 of the $NE\frac{1}{4}$ of the $NW\frac{1}{4}$ of Section 6, Township 57 South, Range 38 East, Dade County, Florida, LESS the Central and Southern Florida Flood Control District canal right of way as recorded in Official Records Book 5046, pages 368 through 373, inclusive, of the Public Records of Dade County, Florida. The South 1/2 of the $SE\frac{1}{4}$ and the East 1/2 of the $SE\frac{1}{4}$ of the $SW\frac{1}{4}$ of Section 6, Township 57 South, Range 38 East, Dade County, Florida, LESS the Central and Southern Florida Flood Control District canal right of way as recorded in Official Records Book 5046, pages 368 through 373, inclusive, of the Public Records of Dade County, Florida.

(TO PARCEL 4)

PARCEL 5: All of Section 5; Section 8, less the North 1/2 of the $SE\frac{1}{4}$ of the $SW\frac{1}{4}$ of the $NW\frac{1}{4}$, and all of Section 17, Township 58 South, Range 38 East.

Less and except therefrom that portion of Section 17, Township 58 South, Range 38 East, conveyed to Central and Southern Florida Flood Control District by Deeds from Arvida Corporation and Aerojet-General Corporation filed February 24, 1966, under Clerk's File Nos. 66R-31403 and 66R-31407 respectively.

Less and except therefrom that portion of Sections 5 and 8, Township 58 South, Range 38 East, which falls within the following:

A strip of land 100 feet wide which lies within 50 feet each side of the Baseline of Survey for State Road 27, Section 87160-2503, in parts of Sections 5, 6, 7 and 8, Township 58 South, Range 38 East, Dade County, Florida, said Baseline of Survey more particularly described as follows:

Commencing at the Section corner common to said Sections 5, 6, 7 and 8 run North 89°29'00" East, a distance of 541.49 feet along the Section line common to said Sections 5 and 8 to the Point of Beginning; thence South 89°29'00" West, a distance of 541.49 feet along that part of said Baseline of Survey for said State Road 27 (being a part of the line common to said Sections 5 and 8) to the Northeast corner of said Section 7; thence North 89°56'56" West, a distance of 378.34 feet along the Baseline of Survey (North line of said Section 7) to the beginning of a curve to the left; thence, Westerly and Southerly along the arc of said curve having a radius of 1273.24 feet through a central angle of 25°31'12" an arc distance of 567.11 feet to the end of said curve; thence South 64°31'52" West a distance of 413.06 feet to the END of said Baseline of Survey, less the existing right of way for Central and Southern Florida Flood Control District Canal 111, Section 3, and less the existing right of way for State Road No. 27.

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A79

(Filed for Record September 7, 1962
As Clerk's File No. 62R151116)

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE made this 24th day of August, 1962, between ARVIDA CORPORATION, a corporation organized and existing under the laws of the State of Delaware, and ARVIDA REALTY CO., a corporation organized and existing under the laws of the State of Florida, hereinafter called the Lessor, and AEROJET-GENERAL CORPORATION, a corporation organized and existing under the laws of the State of Ohio, hereinafter called the Lessee,

WITNESSETH:

That the Lessor has demised and leased to the Lessee that certain land in Dade County, Florida, described as follows:

PARCEL 1: Sections 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36, Township 58 South, Range 38 East;

All of Sections 19, 29, 30 and 32 lying West of U.S. Highway No. 1, and all of Section 31, Township 58 South, Range 39 East.

PARCEL 2: All of Section 8, Township 59 South, Range 39 East, Dade County, Florida, except the right of way of U.S. Highway No. 1, 250 feet in width, as now located and constructed over and across said section, and less also the following described parcel:

A tract of land lying and being in Section 8, Township 59 South, Range 39 East, Dade County, Florida, more particularly described as follows: Beginning at a point which is 600 feet North of the South boundary of Section 8, Township 59 South, Range 39 East, and 75 feet West of the center line of the former Florida East Coast Railroad Company main line track, said center line also being the center line of the present (1955) pavement of U.S. Highway No. 1 otherwise known as State Road No. 5, and said 75 feet being the acknowledged width of the right of way of said U.S. Highway No. 1 from the above mentioned center line to the Southwesterly boundary of said right of way, thence run West parallel with the South boundary of said Section 8, a distance of 700 feet to a point; thence run South on a line perpendicular to said South boundary of said Section 8, a distance of 600 feet to a point on said South boundary of Section 8; thence run East along said South boundary of Section 8, a distance of 817.67 feet to a point on said Southwes erly right of way line of

U.S. Highway No. 1; thence run Northwesterly along the said Southwesterly right of way line of U.S. Highway No. 1, a distance of 611.43 feet to the point of beginning.

PARCEL 3: Sections 6, 7, 18, 19, 30 and 31 of Township 56 South, Range 38 East;

All of Section 6; Section 7, less the E 1/4; Section 18, less the E 1/2 of NE 1/4 and W 1/2 of SE 1/4; Section 19, less the E 1/2 of NE 1/4; Section 30, less W 1/2 of SW 1/4 and all of Section 31, Township 57 South, Range 38 East;

Sections 6, 7, and 18 of Township 58 South, Range 38 East.

(NO PARCEL 4)

PARCEL 5: All of Section 5; Section 8, less N 1/2 of SE 1/4 of SW 1/4 of NW 1/4 and all of Section 17, Township 58 South, Range 38 East.

TO HAVE AND TO HOLD the same to be used for the purposes and upon the rentals and other terms, covenants and conditions as more particularly described and set forth in that certain unrecorded lease and option to purchase entered into as of May 1, 1962 between the Lessor and Lessee, for a term of five (5) years, commencing May 1, 1962.

Witness:

ARVIDA CORPORATION

By _____ President

Attest _____ Secretary

Witness:

ARVIDA REALTY CO.

By _____ President

Attest _____ Secretary

Witness:

AEROJET-GENERAL CORPORATION

By _____ Executive Vice President

Attest _____ Secretary

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STATE OF FLORIDA

COUNTY OF DADE

I HEREBY CERTIFY that on this 4th day of Sept., 1962, before me personally appeared BROWN L. WHATLEY and ROBERT B. COLE President and Secretary respectively of ARVIDA CORPORATION, a corporation under the laws of the State of Delaware and of ARVIDA REALTY CO., a corporation under the laws of the State of Florida, to me known to be the persons who signed the foregoing instrument as such officers and severally acknowledged the execution thereof to be their free act and deed as such officers for the uses and purposes therein mentioned and that they affixed thereto the official seal of said corporations, and that the said instrument is the act and deed of said corporations.

IN WITNESS WHEREOF, I hereunto set my hand and official seal at Miami, said County and State, this 4th day of Sept., 1962.

Ann M. Seaber
Notary Public State of Florida at Large

My Commission expires: 6/7/64

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I HEREBY CERTIFY that on this 24th day of August, 1962, before me personally appeared W. E. ZISCH and T. E. BEEHAN, Executive Vice President and ------Secretary respectively of AEROJET-GENERAL CORPORATION, a corporation under the laws of the State of Ohio, to me known to be the persons who signed the foregoing instrument as such officers and severally acknowledged the execution thereof to be their free act and deed as such officers for the uses and purpose therein mentioned and that they affixed thereto the official seal of the said corporation and that the said instrument is the act and deed of said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal at Azusa, said County and State on the day and year first above written.

W. Jean Brewer
Notary Public

My Commission expires:

W. JEAN BREWER - NOTARY PUBLIC
In and for the County of Los Angeles and State of California
My Commission Expires March 10, 1965

A82
Exhibit B
(Filed April 19, 1962)

(Statutory Form - Section 689.02, F.S.) (Individual Grantor)

Warranty Deed

Made this 9th *day of* April *A. D. 19* 62

Between HARRY SIMONHOFF, joined by his wife ILSE SIMONHOFF; and SAM SIMONHOFF, joined by his wife LILLIAN C. SIMONHOFF

of the County of Dade *in the State of* Florida *parties of the first part, and*

AEROJET-GENERAL INTERNATIONAL CORPORATION, a Corporation of the State of Delaware,

whose address is 1100 West Hollyvale St. Azusa, California *of the County of* Los Angeles *in the State of* California *party of the second part.*

Witnesseth, *that the said parties of the first part, for and in consideration of the sum of* Ten Dollars and other valuable considerations ~~DOLLARS~~ *to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold to the said party of the second part, its successors* ~~HER~~ *and assigns forever, the following described land, situate, lying and being in the County of* Dade *State of Florida, to wit:*

All of Section 11; The West 1/2 and the Northeast 1/4 of Section 15; the West 1/2 and the Northeast 1/4 of Section 17; and all of Section 18; all in Township 59 South, Range 38 East, Dade County, Florida, and comprising 2247 acres, more or less.

This conveyence is made subject to the following:

(a) An Oil, Gas and Mineral Lease of record, held by Shell Oil Company, as Lessee, dated November 11, 1952, for a primary term of ten (10) years.

(b) Reservations by John M. Young of title to an undivided 1/4 interest in all gas and minerals in the North 1/2 of Section 15 and the West 1/2 of Section 17, together with the right to explore, mine and develop the same.

(c) Reservations by the State of Florida of title to an undivided 1/2 interest in oil and petroleum products and an undivided 3/4 interest in all other minerals which may be found in or upon the above described lands, together with the right to explore, mine and develop the same.

(d) Reservations by the State of Florida of certain drainage easements and road rights-of-way over a portion of said lands as appear of record.

(e) Reservation by Everglades Drainage District and its successor in title, Central and Southern Florida Flood Control District, of certain easements for canals and roads as appear of record.

(f) Taxes for the year 1962; and zoning laws and regulations.

And the said parties of the first part do hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

In Witness Whereof, *the said parties of the first part have hereunto set their hands and seals the day and year first above written.*

Signed, Sealed and Delivered in Our Presence:

Harry Simonhoff

Ilse Simonhoff

Sam Simonhoff

Lillian C. Simonhoff

EXHIBIT --B

BLEED THROUGH POOR COPY

State of Florida,

County of DADE

I HEREBY CERTIFY, That on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, HARRY SIMONHOFF and ILSE SIMONHOFF, and SAM SIMONHOFF and LILLIAN C. SIMONHOFF, his wife,

to me well known and known to me to be the individuals described in and who executed the foregoing deed, and they acknowledged before me that they executed the same freely and voluntarily for the purposes therein expressed.

~~AND I FURTHER CERTIFY, That the said~~

known to me to be the wife of the said on a separate and private examination taken and made by and before me, separately and apart from her said husband, did acknowledge that she made herself a party to said deed for the purpose of renouncing, relinquishing and conveying all her right, title and interest, whether of dower, homestead or of separate property, statutory or equitable, in and to the lands described therein, and that she executed the said deed freely and voluntarily and without any compulsion, constraint, apprehension or fear of or from her said husband.

WITNESS my hand and official seal at Miami County of Dade, and State of Florida, this 9th day of April, A. D. 1962.

My Commission Expires _____

Notary Public State of Florida at Large.

Notary Public, State of Florida at Large
My Commission Expires April 11, 1962
Bonded by American Surety Co. of N. Y.

398462

ABSTRACT OF DESCRIPTION

Date

TO

STATE OF FLORIDA,
County of

On this day of A. D. 19 , at o'clock m., this instrument was filed for record, and being duly acknowledged and proven, I have recorded the same on page of Book in the public records of said County.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Circuit Court of the Judicial Circuit of said State, in and for said County.

Clerk

D. C.

A84
Exhibit C

OFFICIAL FORM 6 — OFFICIAL LEGAL FORM MIAMI, FLORIDA

Warranty Deed

Clerk's File 62K-64025
Filed: April 13/62

This Indenture, Made this 13th day of April, A.D. 19 62,
between JOE GREENFIELD and BERTHA GREENFIELD, his wife,
of the County of Dade and State of Florida, parties of the first part, and
GENERAL INTERNATIONAL CORPORATION, a Delaware corporation,
whose mailing address is 1100 West Hollycale Street, Azusa, California,
party of the second part

Witnesseth, That the said parties of the first part, for and in consideration of the
sum of Ten ($10) and other valuable considerations Dollars,
them in hand paid by the party of the second part, the receipt whereof is
hereby acknowledged, have granted, bargained and sold to the said party of the
second part its successors and assigns, forever, the following described land, situate, lying
and being in the County of Dade and State of Florida, to-wit:

N½ of Section 1 and the N½ of Section 12, Township 59 South, Range 38 East, Dade County, Florida, comprising approximately 960 acres, more or less.

SUBJECT, however, to the following:

Drainage and road reservations of record in favor of Trustees of the Internal Improvement Fund of the State of Florida and other governmental agencies.

In Section 1, Township 59 South, Range 38 East, the reservation by Board of Commissioners of Everglades Drainage District of 50% in all oil, gas and minerals, and reservation by Emma Field of 50% interest in all oil, gas and minerals.

In the N½ of Section 12, Township 59 South, Range 38 East, the reservation by Trustees of the Internal Improvement Fund of the State of Florida of 50% interest in all petroleum and petroleum products, of a 75% interest in all other minerals and of 100% of all commercial materials, and a reservation of the remainder of oil, gas and minerals by Alpha F. McKenney and Elizabeth M. Watts.

Taxes for the year 1962 and subsequent years.

And the said parties of the first part do hereby fully warrant title to said land, and will defend the same against the lawful claims of all persons whomsoever.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year above written.

Signed, sealed and delivered in presence of us:

Joe Greenfield (L.S.)
Bertha Greenfield (L.S.)

State of Florida,
County of DADE

I Hereby Certify that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, JOE GREENFIELD and BERTHA GREENFIELD, his wife,

to me well known to be the persons described in and who executed the foregoing deed, and acknowledged before me that they executed the same freely and voluntarily for the purposes therein expressed.

Witness my hand and official seal at Miami, County of Dade and State of Florida, this 13 day of April, A.D. 19 62

My commission expires: June 8, 1963

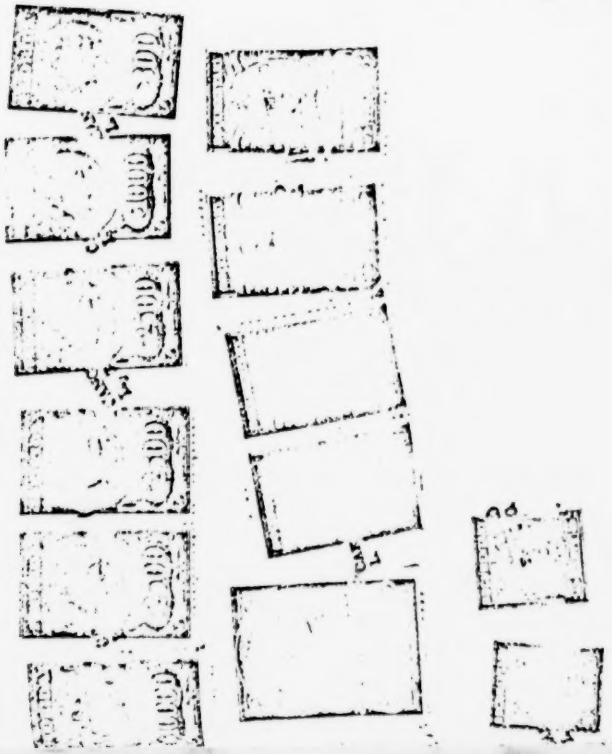
NOTARY PUBLIC SEAL AFFIXED

EXHIBIT - C

Notary Public, State of Florida.

BLEED THROUGH POOR COPY

RECORD AND RETURN TO:
LAWYERS TITLE INSURANCE CORPORATION
150 S. E. SECOND STREET, MIAMI, FLA.



Warranty Deed

FROM

TO

Dated

Filed for Record the day of

, 19 , and recorded

in the Public Records of

County, Florida, in Official Records Book

Page

Clerk

A85

PAGES BOUND VERTICALLY

A86

Exhibit D

'62R90284)

WARRANTY DEED
(USE CORPORATION TO CORPORATION)

PAPCO 6 FORM 33½

PAPCO PUBLISHING CORPORATION
MIAMI 38 FLORIDA

Warranty Deed

Clerk's File 62R-90284
Filed: May22/62

This Indenture, Made, this 21 day of May , A. D. 1962.

BETWEEN THE FLAGLER TRACT, INC.

, a corporation existing under the laws of the State of Florida , having its principal place of business in the County of Dade and State of Florida and lawfully authorized to transact business in the State of Florida, party of the first part, and

AEROJET-GENERAL CORPORATION,
1100 West Hollyvale Street, Azusa, California
a corporation existing under the laws of the State of Ohio , having its principal place of business in the County of Los Angeles and State of California and lawfully authorized to transact business in the State of Florida, party of the second part,

WITNESSETH: That the said party of the first part, for and in consideration of the sum of

TEN AND 00/100 ($10.00)---------- Dollars

to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said party of the second part, its successors and assigns forever, the following described land situate, lying and being in the County of DADE and State of Florida, to-wit:

All of Sections 2, 3, 4, East 1/2 of Section 5, and all of Sections 7, 8, 9, 10 and 14, Township 59 South, Range 38 East, and
All of Sections 6 and 18, Township 59 South, Range 39 East, comprising a total of 6,739.61 acres; subject, however, to ten (10) mortgages of record dated March 12, 1957, and executed by The Flagler Tract, Inc. to Model Land Company, on which there is an unpaid principal balance of $454,376.60, which mortgages the party of the second part assumes and agrees to pay;
subject also to taxes for 1962 and subsequent years.

EXHIBIT - D

And the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

BLEED THROUGH POOR COPY

In Witness Whereof, the said party of the first part has caused these presents to be signed in its name by its proper officers, and its corporate seal to be affixed, attested by its Secretary, the day and year above written.

THE FLAGLER TRACT, INC.

Attest Madeleine Stephens By Thomas Nelson
Assistant- Secretary. President.

Signed, sealed and delivered in the presence of us:

J. L. Dyer

Edward Gelabert

State of Florida,

County of DADE

I Hereby Certify, that on this 21 day of May A. D. 19 62 before me personally appeared Lawrence Nelson Ast. President and Madeleine Stephens Secretary respectively of The Flagler Tract, Inc. a corporation under the laws of the State of Florida, to me known to be the persons who signed the foregoing instrument as such officers and severally acknowledged the execution thereof to be their free act and deed as such officers for the uses and purposes therein mentioned and that they affixed thereto the official seal of said corporation, and that the said instrument is the act and deed of said corporation.

Witness my hand and official seal at Miami Beach in the County of Dade and State of Florida the day and year last aforesaid.

My commission expires: Notary Public State of Florida at large. (Seal)

(SEAL)

NOTARY PUBLIC SEAL

Warranty Deed

FROM CORPORATION TO CORPORATION

FROM

TO

RECORDED

ABSTRACT OF DESCRIPTION

State of Florida,
County of

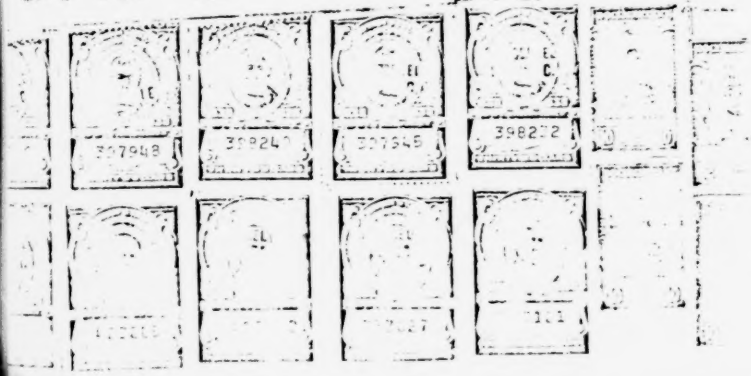
On this day of A. D. 19 at o'clock M., this instrument was filed for record, and, being duly acknowledged and proven, I have recorded the same on Page of Book in the Public Records of said County.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Circuit Court of the Judicial Circuit of said State, in and for said County.

Clerk

D. C.

LAWYERS TITLE INSURANCE CORPORATION



A88
Exhibit E

County of DADE

I Hereby Certify, that on this 21 day of May
A. D. 19 62 before me personally appeared Lawrence Nelson Asst.
and Madeleine Stoehrer
President and Secretary respectively of
The Flagler Tract, Inc.
, a corporation under the laws of
the State of Florida , to me known to be the persons who signed the foregoing instrument as such officers and severally acknowledged the execution thereof to be their free act and deed as such officers for the uses and purposes therein mentioned and that they affixed thereto the official seal of said corporation, and that the said instrument is the act and deed of said corporation.

Witness my hand and official seal at Miami Beach
in the County of Dade and State of Florida
the day and year last aforesaid.

My commission expires: Notary Public State of Florida at large. (Seal)

(SEAL)

NOTARY PUBLIC SEAL AFFIXED

Warranty Deed

(FROM CORPORATION TO CORPORATION)

FROM

TO

Dated

ABSTRACT OF DESCRIPTION

State of Florida,
County of

On this day of A. D. 19 , at o'clock M., this instrument was filed for record, and, having duly acknowledged and proven, I have recorded the same on Page of Book on the Public Records of said County.

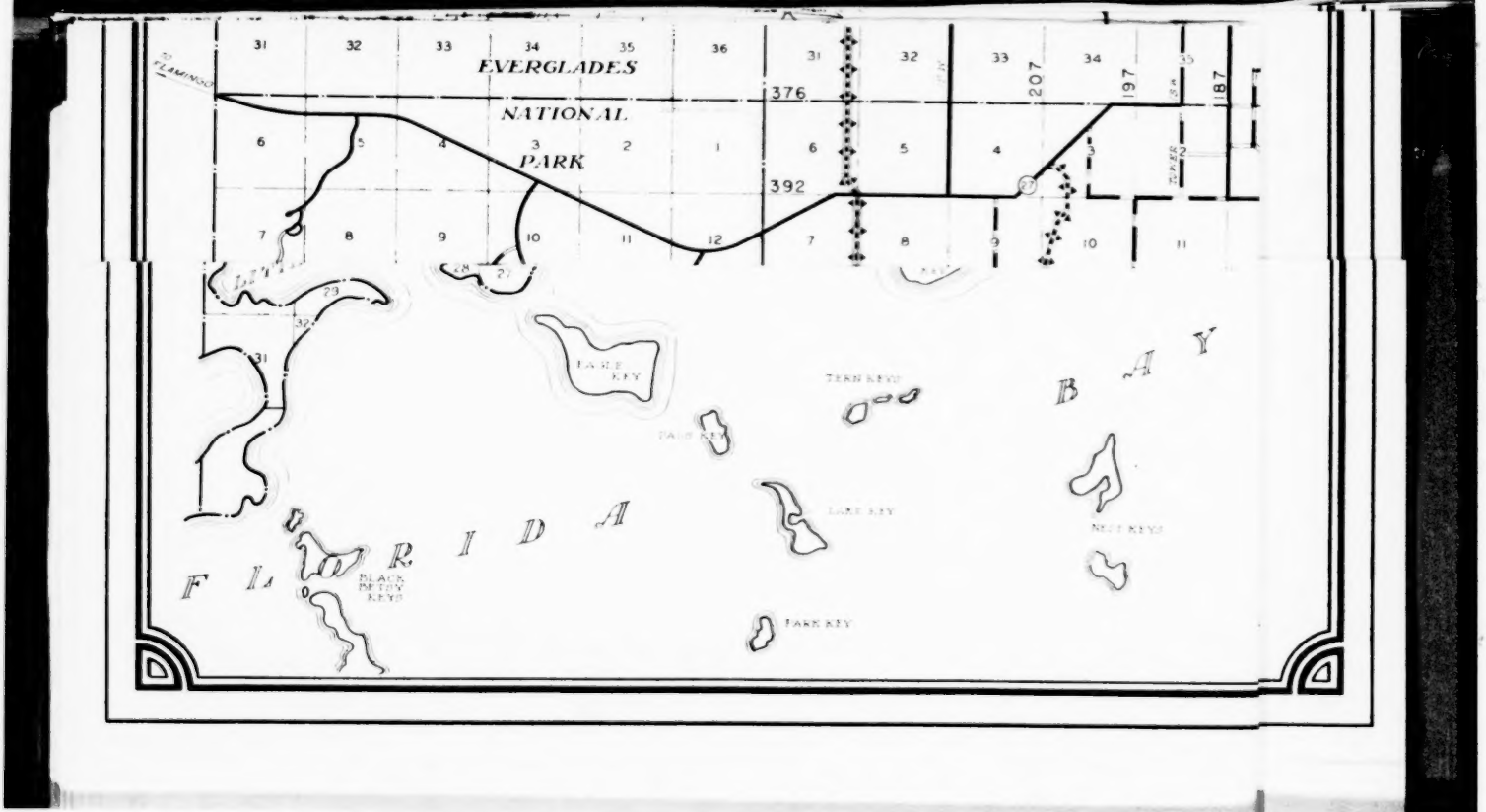
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Circuit Court of the Judicial Circuit of said State, in and for said County.

Clerk

D. C.

BLEED THROUGH POOR COPY

FOLDOUTS TOO LARGE TO BE FILMED



A91
Exhibit F

Folio No. 30-58-6-00-001 Tax Review No. 4390-1

THIS IS A TRUE COPY OF THE RECORDS ON FILE IN THE OFFICE OF THE METROPOLITAN DADE COUNTY TAX ASSESSOR'S OFFICE

Board of Equalization No. _____

PETITION FOR EQUALIZATION OF ASSESSMENT
"REAL PROPERTY"

Petitioner FLORIDA GENERAL CORPORATION
(Please print name in which assessment appears)

Trade Name of Business _____

Location Address of Property Eleven miles Southwest of Florida City on State Road 27

TAX ASSESSMENT: (Office use only)	LAND	BUILDING	TOTAL	ZONING

Comes now, who is a taxpayer of the County of Dade and owner or authorized agent for the owner of the real property located in said county and described below, comes now and complains of the assessment of $ 1,191,960 for the year 19 68, and presents the following:

PROPERTY DESCRIBED IS USED AS				LEGAL DESCRIPTION OF PROPERTY
Residential		Store		Section 19, Twp. 58, Range 33
Duplex		Office		
Apt. Bldg.		Agriculture		
Hotel		Other		
Motel		Vacant		
Shopping Center				
~~Factory~~ Plant Closed				

ANSWER ALL QUESTIONS APPLICABLE TO YOUR COMPLAINT

On what grounds are you making this appeal? 1968 Assessment is in excess of just value

Did you purchase land? Yes Total price $ 98,000 Date purchased? May, 1967

Did you erect ~~the~~ these buildings? Yes Total cost of building $ 4,609,334.29 Date built? 1964

Did you purchase land & improvements? No Total price $ _____ Date purchased? _____

Cost of improvements ~~purchase~~ before purchase $ 2,488,367.98 Date built? 1964

1st Mortgage (if any) in amount of $ 73,500 Date May, 1967 Balance due $ 66,150

2nd Mortgage (if any) in amount of $ none Date _____ Balance due $ _____

Amount of Insurance $ approx. 5,739,000 / under blanket policy Age of buildings 4-1/2 years old

Is land only leased? No Date of lease? _____ Annual Amount $ _____

Is total property leased? No Date of lease? _____ Annual Amount $ _____

(IF APPLICABLE QUESTIONS ARE NOT ANSWERED THE PETITION WILL NOT BE CONSIDERED)

OWNERS VALUE: (Fair Market)	LAND	BUILDING	TOTAL
	196,260	355,802.00	552,062

COMPLAINANT AVERS FURTHER THAT HE CONSIDERS THE JUST VALUE OF THIS PROPERTY ON JANUARY FIRST OF THE TAXABLE YEAR TO BE $ 552,062 FOR THE YEAR 19 68 AND TO SUBSTANTIATE THIS CONTENTION, I AM WILLING TO SUBMIT ANY ADDITIONAL INFORMATION PERTINENT THERETO, INCLUDING A FINANCIAL STATEMENT COVERING THE OPERATION OF THE PROPERTY.

3281 E. E. Nelson Mgr. Home Telephone: 271-2656
Owner or Agent (Agent attach authorization from owner)

P. O. Box 368, Homestead, Fla. Business Telephone: 247-9200
Mail Address

AFFIDAVIT

State of Florida)
County of Dade) ss:

E. F. Nelson, being duly sworn, says that he (she) believes the answers to the above questions are true to the best of the affiant's knowledge, information and belief.

Sworn and subscribed before me this 19th day of July A.D. 1968

James E. Mercer
Notary Public
NOTARY PUBLIC, STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES APR. 15, 1971

My commission expires _____

RETURN TO: Metropolitan Dade County Tax Assessor
Justice Building, Room 310
1351 N.W. 12th Street.
Miami, Florida 33125
Telephone: 372-7561

METROPOLITAN DADE COUNTY TAX REVIEW BOARD

Date scheduled for Board 9-6-68

Did complainant appear? Yes ☑ No ☐

After careful consideration it is the recommendation of this Board that Just Valuation is $ 704,646

Signature 9/4/68
Chairman, Tax Review Board

BOARD OF EQUALIZATION

Date scheduled for Board _____

Did complainant appear? Yes ☐ No ☐

EXHIBIT - F

A92
Exhibit G

F. A. No. 30-9805-00-002 Tax Review No. 4390-3

THIS IS A TRUE COPY OF THE RECORDS ON FILE IN THE OFFICE OF THE METROPOLITAN DADE COUNTY TAX ASSESSOR'S OFFICE

Board of Equalization No.

PETITION FOR EQUALIZATION OF ASSESSMENT
"REAL PROPERTY"

Petition of AEROJET GENERAL CORPORATION
Senior Deputy (Please print name in which assessment appears)

Trade Name of Business

Location/Address of Property Eleven Miles Southwest of Florida City on State Road 27

TAX ASSESSMENT: (Office use only)	LAND	BUILDING	TOTAL	ZONING

Comes now the complainant, who is a taxpayer of the County of Dade and owner or authorized agent for the owner of the real property located in said county and described below, comes now and complains of the assessment of $ 1,055,820 for the year 19 ____, and presents the following:

PROPERTY DESCRIBED IS USED AS				LEGAL DESCRIPTION OF PROPERTY
Residential		Store		W 1/2 of Sec. 5, Twp. 59, Range 38
Duplex		Office		
Apt. Bldg.		Agriculture		
Hotel		Other		
Motel		Vacant		
Shopping Center				
Industrial	Plant Closed			

ANSWER ALL QUESTIONS APPLICABLE TO YOUR COMPLAINT

On what grounds are you making this appeal? 1968 Assessment is in excess of just value

Did you purchase land? No Total price $ test caisson Date purchased?
Did you erect this building? Yes Total cost of building $ 2,131,249.48 Date built? 1964
Did you purchase land & improvements? No Total price $ Date purchased?
Cost of improvements at purchase $ 161,008.85 Date built? 1964
1st Mortgage (if any) in amount of $ none Date Balance due $
2nd Mortgage (if any) in amount of $ Date Balance due $
Amount of Insurance $ 1,851,000 Age of building? test caisson 4-1/2 years
Is land only leased? Yes Date of lease? Dec. 1961 Annual Amount $ 7,000.
Is total property leased? No Date of lease? Annual Amount $

(IF APPLICABLE QUESTIONS ARE NOT ANSWERED THE PETITION WILL NOT BE CONSIDERED)

OWNERS VALUE: (Fair Market)	LAND	BUILDING	TOTAL
	37,640	57,134	94,774

COMPLAINANT AVERS FURTHER THAT HE CONSIDERS THE JUST VALUE OF THIS PROPERTY ON JANUARY FIRST OF THE TAXABLE YEAR TO BE $ 94,774 FOR THE YEAR 19 68, AND TO SUBSTANTIATE THIS CONTENTION, I AM WILLING TO SUBMIT ANY ADDITIONAL INFORMATION PERTINENT THERETO, INCLUDING A FINANCIAL STATEMENT COVERING THE OPERATION OF THE PROPERTY

3283 E. E. Nelson Mgr. Home Telephone: 271-2656
Owner or Agent (Agent attach authorization from owner)

P. O. Box 368, Homestead, Fla. Business Telephone: 247-9200
Mail Address

AFFIDAVIT

State of Florida)
County of Dade) ss:

E. E. Nelson, being duly sworn, says that he (she) believes the answers to the above questions are true to the best of the affiant's knowledge, information and belief.

Sworn and subscribed before me this 19th day of July A.D. 1968

Notary Public

My commission expires Oct. 20, 1968

RETURN TO: Metropolitan Dade County Tax Assessor
Justice Building, Room 310
1351 N.W. 12th Street
Miami, Florida 33125
Telephone 377-7561

METROPOLITAN DADE COUNTY TAX REVIEW BOARD

Date scheduled for Board 9-6-68

Did complainant appear? Yes ☑ No ☐

After careful consideration it is the recommendation of this Board the Just Valuation is $ 134,129

Signature _____
Chairman, Tax Review Board

BOARD OF EQUALIZATION

Date scheduled for Board

Did complainant appear? Yes ☐ No ☐

EXHIBIT - G

BLEED THROUGH POOR COPY

A93
Exhibit H

Folio No. 30-9806-00-001 Tax Review No. 4390-2

THIS IS A COPY OF THE RECORDS ON FILE IN THE OFFICE OF THE METROPOLITAN DADE COUNTY TAX ASSESSOR'S OFFICE

Board of Equalization No.

PETITION FOR EQUALIZATION OF ASSESSMENT
"REAL PROPERTY"

Petitioner's Name AEROJET GENERAL CORPORATION

(Please print name in which assessment appears)

Trade Name of Business

Location Address of Property Eleven miles Southwest of Florida City on State Road 27

TAX ASSESSMENT: (Office use only)	LAND	BUILDING	TOTAL	ZONING

Complainant, who is a taxpayer of the County of Dade and owner or authorized agent for the owner, of the real property located in said county and described below, comes now and complains of the assessment of $ 144,740 for the year 19 68, and presents the following:

PROPERTY DESCRIBED IS USED AS				LEGAL DESCRIPTION OF PROPERTY
Residential		Store		Sec. 6, Twp. 59, Range 38
Duplex		Office		
Apt. Bldg.		Agriculture		
Hotel		Other		
Motel		Vacant		
Shopping Center				
~~Industrial~~ Plant Closed				

ANSWER ALL QUESTIONS APPLICABLE TO YOUR COMPLAINT

On what grounds are you making this appeal? 1968 Assessment is in excess of just value

Did you purchase land? No Total price $ Date purchased?

Did you erect this building? Yes Total cost of building $ 167,772.19 Date built? 1964

Did you purchase land & Improvements? No Total price $ Date purchased?

Cost of improvements ~~since~~ before purchase $ 218,063.98 Date built? 1964

1st Mortgage (if any) in amount of $ Date Balance due $

2nd Mortgage (if any) in amount of $ Date Balance due $

Amount of Insurance $ Approx. 310,000 under / blanket policy Age of building? 4-1/2 years

Is land only leased? Yes Date of lease? Dec., 1961 Annual Amount $ 16,662.50/ yr.

Is total property leased? No Date of lease? Annual Amount $

(IF APPLICABLE QUESTIONS ARE NOT ANSWERED THE PETITION WILL NOT BE CONSIDERED)

OWNER'S VALUE: (Fair Market)	LAND	BUILDING	TOTAL
	87,000	20,210	107,210

* note: AEROJET has option to purchase land at 33,325.00

COMPLAINANT AVERS FURTHER THAT HE CONSIDERS THE JUST VALUE OF THIS PROPERTY ON JANUARY FIRST OF THE TAXABLE YEAR TO BE $ 107,210 FOR THE YEAR 19 68, AND TO SUBSTANTIATE THIS CONTENTION, I AM WILLING TO SUBMIT ANY ADDITIONAL INFORMATION PERTINENT THERETO, INCLUDING A FINANCIAL STATEMENT COVERING THE OPERATION OF THE PROPERTY

3282 E. E. Nelson Mgr. Home Telephone: 271-2656

Owner or Agent (Agent attach authorization from owner)

P. O. Box 368, Homestead, Fla. Business Telephone: 247-9200

Mail Address

AFFIDAVIT

State of Florida)
County of Dade) ss:

E. E. Nelson, being duly sworn, says that he (she) believes the answers to the above questions are true to the best of the affiant's knowledge, information and belief.

Sworn and subscribed before me this 19th day of July A.D. 1968

Ruben R. Rivera
Notary Public

My commission expires Oct. 22, 1968

RETURN TO Metropolitan Dade County Tax Assessor
Justice Building, Room 310
1351 N.W. 12th Street
Miami, Florida 33125
Telephone 377-7551

METROPOLITAN DADE COUNTY TAX REVIEW BOARD

Date scheduled for Board 9-6-68

Did complainant appear? Yes ☑ No ☐

After careful consideration it is the recommendation of this Board that Just Valuation is $ 116,430

Signature Bruce D. Hill
Chairman, Tax Review Board

BOARD OF EQUALIZATION

Date scheduled for Board

Did complainant appear? Yes ☐ No ☐

VP/

EXHIBIT - H

APPENDIX "D"

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 31018

AEROJET-GENERAL CORPORATION,
Plaintiff-Appellee,

vs.

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida; STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND; and STATE OF FLORIDA BOARD OF EDUCATION,
Defendants-Appellants.

Response to Motion to Remand the Cause, etc.

Appellants have filed with this Court, in addition to their printed Petition for Rehearing, a pleading which they call "Motion To Remand The Cause With Leave To File Motion To Set Aside Judgment In The Lower Court." For a variety of procedural and other legal reasons the motion is improper and without merit. Essentially, the motion attempts to secure this Court's order directing the District Court to favorably entertain a motion to set aside the judgment which this Court has recently affirmed; and in support of this request appellants argue things which are entirely *dehors* the record herein. Appellants assert factual matters which they claim people have told them, and they assert factual matters which are conclusions they reach by examining certain papers. They attach copies of certain of these papers to their motion, attempting thereby to bootstrap the so-called factual basis to this argument into the Court file. *None* of the asserted factual matters upon which this motion is based are a proper part of this Court record, as we will point out hereinafter.

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What appellants have done is throw before the Court a few pieces of paper which they think would give them a basis to make the arguments which appear in their motion. Their theories, which they say should move this Court to order the District Court to open its judgment, are no more than sheer speculation and conclusion. The recurrent theme in the motion, for instance, is that a substantial portion of the lands in question are

> "9 to 13 miles from the manufacturing plant and associated facilities. . . . so totally remote and such a vast distance from the Appellee's manufacturing plant and associated facilities that it could hardly be considered reasonably likely that such land would be 'devoted to such usage' or serve the 'best interests of the people of the State of Florida'; but such recitals aided in the palliation of the public."

Strong language, that, when you know as little as appellants obviously do about how to operate a facility for developing, testing and manufacturing rocket engines. As it happens, if rocket engines are to be developed, tested and manufactured, the rockets and the rocket fuel must be stored somewhere, and in a fashion mindful of the needs of the government and the safety of the plant workers and the general public. An ordinary, reasonable and prudent rocket builder would undoubtedly provide for himself a place to store rockets and rocket fuel which is safely removed from other volatile material as much as is reasonably possible. Hence, a facility which contemplates various uses of rocket fuel must occupy a large tract of land. Appellants are careful to mention that a large portion of the land in question here is located from 9 to 13 miles from the test caisson, which is also located on land owned by appellants and leased by Aerojet with option to purchase. What appellants are not quite so careful to

point out is that Aerojet acquired contiguous sections of land across that 9 to 13 miles of land, so that the land in question here is contiguous at all points to other land owned by Aerojet.[1] (See Exhibit E to Motion).

The unexpressed implication in appellants' motion, which refers to Aerojet's lease-option of the land in question as a "sweetheart contract", is that Aerojet acquired land previously owned by the public because Aerojet could get it at a good price—not because the land was contemplated for use in conjunction with Aerojet's rocket development and production facilities. Refutation of this implication requires us to depart the record to the same extent that appellants have done so in making their argument, and we have no more authority to depart the record than do appellants. Since the accusations appellants make with reckless abandon include "palliation of the public", we are unwilling to let those accusations go unrebutted. We therefore resort to some non-record material ourselves, without contending that the following facts should be any more a part of this record than those asserted by appellants. In fact, we ask the Court to strike our own extraneous material if it strikes that of appellants, for everything of a factual nature argued here is *dehors* the record in its proper state. But if appellants are to be allowed to inject extraneous matter into the record at this point, and if we are forced to rebut arguments based upon it before this Court and possibly before the Supreme Court of the United States, then candor requires us to state that we want at least to have our own extraneous matter in the record, too. All of it (that of appellants and appellee) should be stricken, however, for it is all patently improper under the Federal Rules of Appellate Procedure.

1. It has been apparent in this record at all times from the legal description of the lands in question that they were in various tracts, and that the tracts were not contiguous.

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Appellants' resort to flagrant untruths in their vain attempt to escape their contractual agreement is illustrated in their charge of misrepresentation in the preamble —recital in the Lease With Option to Purchase of a need for the subject lands "for the purpose of establishing a manufacturing plant and associated facilities to be used in production activities which are designed to strengthen the defense posture of the United States." This charge is predicated upon another charge, misleading in fact, that some 23,040 acres of the leased lands are located some 9 to 13 miles from the land on which Aerojet has constructed its solid fuel rocket plant and facilities. Misleading it is because appellants intentionally failed to mention that Aerojet owns the land separating the two mentioned parcels of leased land, and the entire contiguous parcel takes the configuration appearing in their Exhibit E of necessity due to its proximity to the Everglades National Park. Aerojet obviously could not acquire part of the Everglades National Park for its facility, and so was forced to acquire contiguous sections of land north from the manufacturing facility to the northern boundary of the Everglades National Park, where the second large tract was acquired.

Implicit in this attack by appellants is the assertion that Aerojet acquired the lease option rights on the subject land though Aerojet had no intention of using the land in connection with its rocket testing, development and production facilities. This is simply not the case. Aerojet had contracts with the National Aeronautics and Space Administration (NASA), for the testing and development of both solid[2] and liquid[3] fuel rocket engines. The "260"

2. The "260".
3. The "M-1".

and "M-1" are contemplated as first and second stage engines for a vehicle capable of reaching the moon. Toward this end, as this Court recognizes in its opinion,[4] Aerojet expended some $21,200,000 for building and equipment for development of solid rocket fuels,[5] $2,800,000 of which was on land leased by Aerojet from the appellants, and the balance was invested in contiguous Aerojet owned lands.[6] This initial, but enormous capital expenditure in solid fuel rocket engine development was made primarily in the southern most portion of the Aerojet Dade County land, but that fact is hardly proof that the balance of the land was acquired for some nefarious reason. (Indeed, even appellants cannot explain why Aerojet acquired the vast amount of Arvida land connecting the northern and southern portion of their holdings at per acre prices which appellants argue inferentially were exorbitant. If Aerojet sought to make a "killing" on an isolated piece of appellants' land, it is difficult to explain why they bought the intervening 9 to 13 miles worth of land). As is evident from the attached exhibits, the program contemplated by Aerojet and NASA of both solid and liquid fuel rocket stages called for all of the property Aerojet acquired in Dade County, and Aerojet planned use of the property in its entirety.

The 23,040 acres of land to which appellants refer was to be used for propellant processing and testing, with ap-

---

4. Page 10 of this Court's Opinion.

5. The fact that Aerojet's 1968 Petition for Equalization to the Dade County Tax Equalization Board placed a then fair market value estimate lower than the initial cost is hardly relevant to Aerojet's costly reliance on the Lease-Option and NASA's plans for the solid fuel rocket program. It is certainly understandable that the federal government's later cutback in spending on this program had the effect of reducing the re-sale value of this specialized equipment below its initial cost.

6. For which Aerojet paid some $7,100,000 (Page 10 of this Court's Opinion).

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propriate buffer zones. The large area of land acquired by Aerojet was necessary also for safe storage and use of fuel and equipment which obviously must be handled with a great deal of care. The need for such an expanse of land is emphasized in the same exhibit by a pictorial comparison of Aerojet's Sacramento, California rocket booster facility, which is smaller in total area.[7]

While Aerojet has had to cease its Dade County plant operations due to a cutback in the federal government spending in solid fuel rocket research and development, the land acquired by Aerojet in Dade County is not necessarily destined to other uses. This is so even though "[o]nce the plaintiff completed construction of the agreed-upon facilities, the defendants received all they bargained for."[8] The subject lands and the contiguous lands owned by Aerojet in Dade County may well be needed as an integral part of the recently announced 5.5 billion dollar space shuttle program endorsed by the President. Aerojet is already actively seeking contracts for development and production of a solid fuel booster stage to be used in this program.[9] The less costly (because already designed and partially tested) solid fuel rocket booster is an attractive solution to this expensive program, rendering Aerojet one of the probable participants.[10]

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7. It, like Aerojet's Azuza, California plant site is already bursting at its seams, proving that experience in land needs for the rocket program teaches the need for relatively larger site areas.

8. Page 28 of this Court's Opinion.

9. This is reflected in the attached (Exhibit B) article in the Miami (Florida) News of January 7, 1972.

10. Even if otherwise preferred, Aerojet's existing California solid fuel rocket facilities could not accommodate the expected requirements of this space shuttle program. Additionally, if Cape Kennedy is to be the launch site, the proximity of the Dade County production facility would be of enormous value.

What will actually happen in the space shuttle program is of course beyond prediction, though Aerojet believes that its judgment in investing the tremendous sums in Dade County facilities will be vindicated. The timely circumstance of the space shuttle announcement should be a pointed reminder to appellants that their best policy in the long run would be to honor the contracts that they enter.

There are a number of procedural bases upon which appellants' Motion to Remand should be denied and stricken from the record.

First, appellate rules provide for rehearing petitions, but they do not provide for other post-opinion motions. Undoubtedly, an appellant is entitled to contend on appeal that a judgment of the lower court is erroneously entered and should be set aside; but the right to seek rehearing after an opinion is rendered is more limited by the term of Rule 40, F.R.A.P. If appellants wished to have this cause remanded on the ground that the District Judge improperly granted specific performance; they had the right to so argue in any one of their three briefs on the merits. Indeed, it can hardly be denied that such arguments were made in fact. If this Court had wished to remand to the District Court with instructions that evidence be taken, it surely could have so ordered in its opinion. This Court would not in such event be relegated to ordering the District Court to entertain a motion to set aside the judgment. But now appellants should be heard only on their Petition for Rehearing, which should not contain argument on matters *dehors* the record.

No premise is more fundamental to the system of appellate review than that appellate determinations are made on the record before the lower court. It is the obligation

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of *both* sides of a lawsuit to adduce, or at least proffer, all facts or evidence of facts to the Court which first hears the case. Appellants now attempt to inject into the record documents and factual conclusions which are not a part of the record.

> ". . . The bar should realize that (petitions for rehearing) are to be filed only in unusual circumstances. In the absence of clear error they are not to be used to reargue matter already argued and determined. *Conversely, they are not for the purpose of presenting matters which should have been but, without good cause, were not argued before, . . . and particularly they are not, as here, to be used to introduce a record which was not even presented below.*"
>
> *Local 1505* v. *Local Lodge No. 1836*, 304 F.2d 365, 368 (1st Cir. 1962), decision vacated for mootness 372 U.S. 523.

If new matter may not be introduced into a record on petition for rehearing, certainly it cannot be done by means of a motion which is not even mentioned in the procedural rules. The cases cited by appellants do not stand for the proposition that this Court may grant a motion such as this at the rehearing stage. In *Youngstown Sheet and Tube Co.* v. *Lucey Products Co.*, 403 F.2d 135 (5th Cir. 1968), this Court did not have before it a rehearing petition nor was there any post-opinion motion before it upon which remand was ordered. Rather, the issue was whether evidence which one party omitted to introduce below was such that the case should be remanded to allow such evidence. This issue was raised and briefed by the parties and decided by the Court in its opinion; it was not a case in which one party raised the question of new evidence at the rehearing stage. The Court noted that ordinarily a failure to adduce evidence

was fatal error, except in cases where an innocent, unwary and justifiably unknowing litigant did not introduce evidence for innocent reasons.

In the present case, the "new evidence" was not mentioned (even though available to them if relevant) by appellants at any time during the proceedings before the District Court, despite the fact that *over six months* elapsed between the time when Aerojet first moved for summary judgment and the time that such motion was heard and granted. During that interim, Aerojet engaged in extensive investigation of the records at the two owner-boards, resulting in the documents and covering stipulation which comprise Aerojet's Supplemental Appendix becoming a part of the record. Nor did this "new evidence" bear mention in any of the three briefs filed by appellants herein, two of them being filed *after* the new cabinet officers were inaugurated and undertook to handle the suit. It was only after this Court's opinion on the merits ruling in favor of Aerojet that appellants decided they would pull yet another rabbit out of the hat. This time, they have completely departed the record. In fact, the matters which they attempt to inject into this record should be stricken so that appellants cannot refer to it in any petition they might address to the Supreme Court of the United States. Such superfluous matter is properly stricken. *E.g., National Latex Products Co.* v. *Sun Rubber Co.*, 276 F.2d 167, 168 (6th Cir. 1960).

The only other authority appellants cite in their motion is *Seaboard A.L.R.R.* v. *Atlanta, B. & C.R. Co.*, 35 F.2d 609 (5th Cir. 1929), which again was not a case in which any motion was presented at appellate rehearing stage. On the other hand, it is not difficult to locate authority for the proposition that new theories and matters are not properly raised for the first time by a party at the rehear-

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ing stage of an appeal. *Minute Maid Corp.* v. *United Foods, Inc.*, 291 F.2d 577 (5th Cir. 1961); *Partenweederei, MS Belgrano* v. *Weigel*, 313 F.2d 423 (9th Cir. 1962); *Lummus Co.* v. *Commonwealth Oil Refining Co.*, 280 F.2d 915 (1st Cir. 1960).

In this case, the only reason that appellants' arguments on this motion can be called "new" is that appellants have never bothered to make them before. We have no way of knowing whether appellants' predecessors in office and their counsel[11] considered making these arguments, and rejected the notion upon thorough investigation, but we do know that this Court gave present appellants every opportunity to assert new grounds for reversal and the present arguments were never made.

It is clear in any event that the matters asserted in their motion would not qualify as newly discovered evidence under the civil rules. To entitle a party to new trial on grounds of newly discovered evidence it must appear that the failure to produce the evidence to the lower court must not have been caused by the moving party's lack of due diligence. The evidence must be such as was not and could not by the exercise of diligence have been discovered in time to present in the original proceeding. It must be of such a material and controlling nature as would probably induce a contrary decision. It may not merely be cumulative. *Moore's Federal Practice* §60.23(4).

The matters relied upon by appellants, which they coyly say have "developed since submission of the cause", are all said to appear from documents contained in public records ranging in date as long ago as ten years. The documents are old deeds, old ad valorem tax equalization

11. Noteworthy is the fact that counsel for the prior appellant-boards are still co-counsel for the present appellant-boards in this cause before this Court.

forms, and a good deal of other rank hearsay which is of undetermined age. Conspicuous by its absence is any fact or factor which made this information undiscoverable by the exercise of due diligence. On the contrary, a mere glance in the public records would have disclosed all such documents. Nor do appellants say that the newly "developed" matters they assert would probably induce a contrary decision, or render the present decision erroneous. They assert only that the District Judge might exercise his discretion differently if these newly "developed" matters were before him. It has been held that relief from judgment is not warranted even if the judgment is erroneous. *Hartman* v. *Lauchli*, 304 F.2d 431 (8th Cir. 1962). In sum, the law requires a party to present all relevant factual assertions to the lower court when the case is pending there, except in unusual circumstances when it is humanly impossible to do so. Appellants have failed entirely to show that they should be entitled to open the District Court's judgment on the basis of some factual conclusions they make on the basis of old documents and out of thin air.

WHEREFORE, Aerojet respectfully urges the Court to deny the appellants' Motion To Remand and to strike all extraneous matter which is not properly a part of this record.

Mershon, Sawyer, Johnston, Dunwody & Cole
Attorneys for Appellee, Aerojet-General Corporation
1600 First National Bank Building
Miami, Florida 33131
By /s/ George W. Wright, Jr.
George W. Wright, Jr.
By /s/ Karl B. Block, Jr.
Karl B. Block, Jr.

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I HEREBY CERTIFY that a true copy of the foregoing Response To Motion To Remand The Cause, Etc., was mailed this 13th day of January, 1972 to: PHILLIP S. BENNETT, ESQ., General Counsel, Board of Trustees of Internal Improvement Trust Fund, Elliot Building, Tallahassee, Florida 32304; RIVERS BUFORD, JR., ESQ., General Counsel, State of Florida Board of Education, The Capitol Building, Tallahassee, Florida 32304; THE HONORABLE ROBERT SHEVIN, Attorney General, The Capitol Building, Tallahassee, Florida; MARION SIBLEY, ESQ., 605 Lincoln Road Building, Miami Beach, Florida, Attorneys for Appellants.

Mershon, Sawyer, Johnston, Dunwody & Cole
By /s/ George W. Wright, Jr.
Of Counsel

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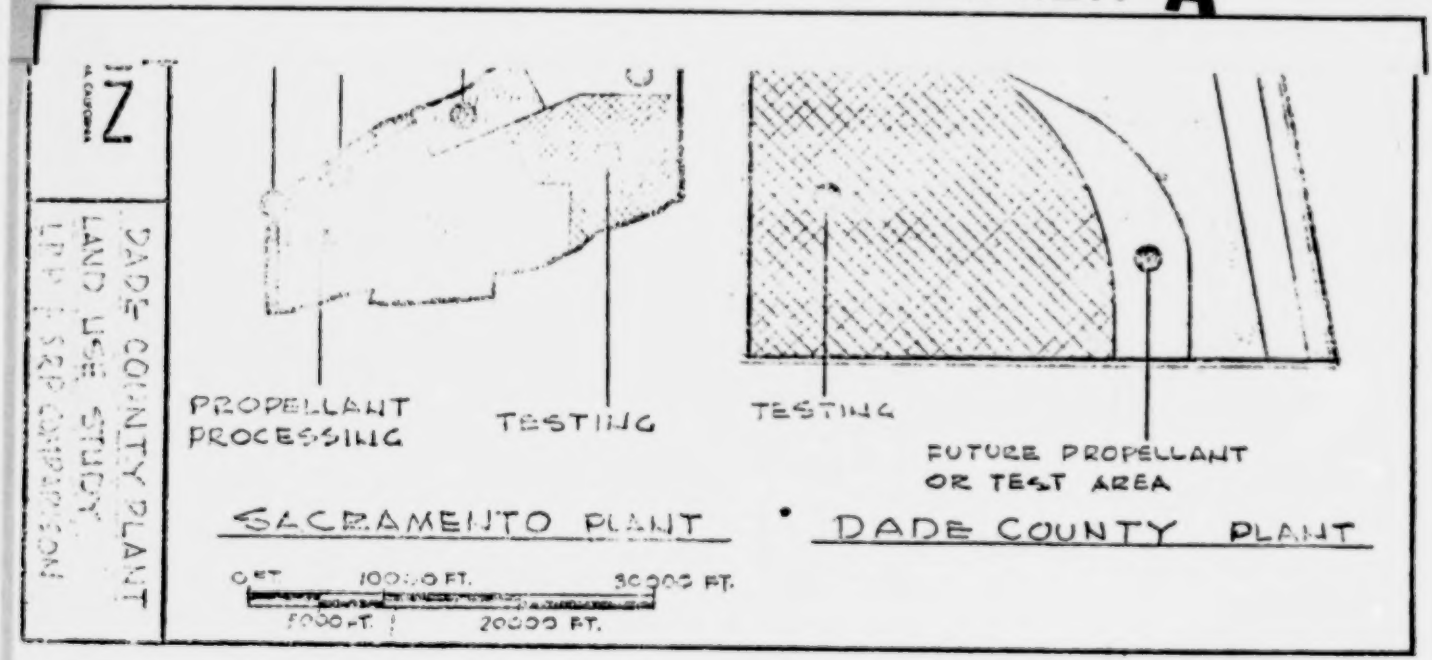
EXHIBIT A



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Aerojet may work on shuttle rocket

By Al Volker
Miami Herald Staff Writer

CAPE KENNEDY — Aerojet General Corp., which 10 years ago envisioned a huge rocket fuel plant in South Dade County, may get a shot at the $13 billion space shuttle program proposed by President Nixon.

Space engineers here said that a completely reusable shuttle system — a winged booster and a winged orbiting spaceship, both of which would be piloted back to earth by astronauts — is apparently not in the President's mind.

That means that one of several less-costly systems ready in the design phase would be chosen, Sam Beddingfield, space shuttle group manager at the Kennedy Space Center, said today.

One would call for a simple liquid-fueled rocket that would be parachuted back into the Atlantic where it would be recovered and towed back to the Cape for reuse, Beddingfield said.

The other, less expensive alternative would be to use a 156-inches-in-diameter solid fuel booster which would not be recoverable.

Three aerospace companies in the United States have the technology to build such big solid-fueled rockets. He said they are Giyco, United Technology and Aerojet.

"I should think Aerojet would be interested," he said. Aerojet tested several 260-inch models in South Dade several years ago.

"We're taking a look at the two systems," Bessing-field said.

If the less costly approach proves successful, he said, there would be time later to move toward the fully reusable shuttle system that promises such savings in manned space operations that the United States could revitalize its space exploration program.

If Congress approves of the President's proposal, $200 million would be needed to convert the manport's vast launch facilities from its present Saturn 1C and Saturn V capabilities.

This expenditure would almost certainly mean that Cape Kennedy would continue to be the launch site for shuttle after research and development flights are completed and operational missions begin.

The first manned R&D flights are possible by April of 1978, and operational missions by the end of the decade.

They would be available to civilian space programs of all nations.

"We are spending some planning money all along," said Beddingfield. He added that a large commitment of

Continued on 6A, Col 1

may work on shuttle

Continued From Page 1A

[illegible] to the Cape could not be expected until [illegible] spacecraft design options are chosen, and [illegible] on the launch pad. Beddingfield said [illegible] spaces are expected [illegible] spacing.

Rhea Dunn, deputy director of KSC, repeated the optimistic assessment made to the Miami Herald in December 1970 that the space shuttle program would be ready for [illegible] and recovery.

"We are very pleased," said Beddingfield of the [illegible]. "This is one of the things we have been stressed about — but so much [illegible] on this would be the launch site but whether the shuttle would go at all."

He indicated there is widespread optimism at the Cape that Congress will approve the $5.5 billion Fiscal Year [illegible] is reports optimistic.

If the Cape is chosen, construction, beginning here [illegible] would [illegible] the [illegible] space program — launch with three 3-man missions to an [illegible] space station — is completed. The Apollo-Soyuz program's last two missions are scheduled for this year.

The space shuttle mission of dollars should keep the Brevard County economy at its present level at least, Beddingfield believes.

"It won't return to its peak [illegible] of 1967-1968," said Beddingfield. "But the present 34,000 workers and 2,500 of them NASA employees and the next wave forces of contractors, — should be maintained. Of course, we still have some unmanned and then Apollo and Skylab are finished.

The President's proposal envisions a crew of [illegible] for the use of a 150-foot [illegible] placed in earth orbit with two astronauts and two scientists in the cockpit. More passengers could be carried in the cargo space, approximately 15 feet in diameter and 60 feet long. The astronauts would [illegible] the cargo space, [illegible] the [illegible] and [illegible] the [illegible] and [illegible] the [illegible] and

APPENDIX "E"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 31018

AEROJET-GENERAL CORPORATION,
Plaintiff-Appellee,

vs.

REUBIN O'DONOVAN ASKEW, Governor, ET AL,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Florida

Before GODBOLD, SIMPSON, and CLARK, Circuit Judges.

BY THE COURT:

IT IS ORDERED that appellants' motion to remand the above styled and numbered cause to the District Court for the Northern District of Florida with leave to file motion to set aside judgment in the lower court, is hereby denied.

71-1505

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

MAY 17 1972
MICHAEL RODAK, JR., CLERK

Case No. .....

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida; STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND; and STATE OF FLORIDA BOARD OF EDUCATION,
Petitioners,

vs.

AEROJET-GENERAL CORPORATION,
Respondent.

APPENDIX

ROBERT SHEVIN
Attorney General of the State of Florida, Counsel for the State of Florida Board of Trustees of the Internal Improvement Trust Fund and Counsel for the State of Florida Board of Education, Petitioners
The Capitol
Tallahassee, Florida 32304

MARION E. SIBLEY
Special Assistant Attorney General, Appointed to Appear for the Petitioners
605 Lincoln Road
Miami Beach, Florida 33139

R. L. MIDKIFF, INC., 926 Cherry Street, Kansas City, Mo. 64106, 421-3030

RECORD VOLUME I

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 31,018

CLAUDE R. KIRK, JR., et al.,
Defendants-Appellants,

vs.

AEROJET-GENERAL CORPORATION,
Plaintiff-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION

APPENDIX OF APPELLANTS

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DOCKET ENTRIES OF PROCEEDINGS IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION

	Filed
Complaint for Specific Performance	October 21, 1969
Answer to Complaint	December 1, 1969
Request for Admissions of Fact	November 11, 1969
Supplemental Request for Admissions of Fact	December 12, 1969
Reply to Request for Admissions of Fact	December 1, 1969
Reply to Supplemental Request for Admissions of Fact	December 17, 1969
Motion for Summary Final Judgment	January 20, 1970
Summary Final Judgment	September 21, 1971

COMPLAINT FOR SPECIFIC PERFORMANCE

(Number and Title omitted) (Filed October 21, 1969)

The plaintiff, Aerojet-General Corporation, by its undersigned attorneys, sues the defendants, CLAUDE R. KIRK, JR., Governor, TOM ADAMS, Secretary of State, EARL FAIRCLOTH, Attorney General, FRED O. DICKINSON, JR., Comptroller, BROWARD WILLIAMS, Treasurer, FLOYD T. CHRISTIAN, Commissioner of Education and DOYLE CONNER, Commissioner of Agriculture, as and constituting members of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, and as and constituting members of the State Board of Education of the State of Florida, for that:

1) The plaintiff is a corporation duly incorporated, organized and existing under the laws of the State of Ohio, with its principal place of business in a state other than the State of Florida.

2) The defendants and each of them are citizens of the State of Florida and reside in Leon County, Florida.

3) The matter in controversy herein exceeds the sum of Ten Thousand Dollars ($10,000.00), exclusive of interest and cost.

4) On or about the 21st day of December, 1961, the plaintiff and the defendants, or their predecessors in title and office, entered into a written Lease With Option to Purchase, a true and correct copy of which is attached hereto and by reference made a part hereof as Exhibit A. A memorandum of said Lease With Option to Purchase was recorded in the Public Records of Dade County, Florida, on December 17, 1962, in Official Records Book 3450, at page 470.

5) On or about the 14th day of January, 1963, the plaintiff and the defendants, or their predecessors in title and office, entered into a written Amendment to Paragraph Three of said Lease With Option to Purchase, true and correct copy of which is attached hereto and by reference made a part hereof as Exhibit B.

6) Paragraph No. 8 of said Lease With Option to Purchase provided:

> The Lessor herewith grants to the Lessee the exclusive right, option and privilege to purchase all of the land described herein at any time within the ten (10) year lease period at and for a price of Fifty Dollars ($50.00) per acre. In the event the Lessee exercises

its right, option and privilege to purchase the above described land, the purchase price of said land to be determined by the number of acres multiplied by Fifty Dollars ($50.00), less the amount of any unearned rent paid by Lessee under the terms of this lease shall be payable as follows:

(a) Upon the election of Lessee, the total amount of the purchase price to be determined, as aforesaid, shall be paid to Lessor simultaneously with delivery to Lessee of a deed to said lands vesting good and merchantable fee simple title thereto in Lessee subject only to applicable statutory rights and reservations in effect on date of conveyance and the covenant on the part of Lessee to be kept and performed contained in paragraph 5 above, or

(b) Upon election of Lessee, the payment of any amount equal to or in excess of twenty per cent (20%) of the total purchase price to be determined, as aforesaid, shall be paid to Lessor simultaneously with the execution of a contract to purchase by and between the parties hereto, which contract to purchase shall provide for a promissory note for an amount equal to the unpaid balance due to Lessor from Lessee for purchase price of said lands described herein, which note shall be paid to Lessor by Lessee in ten (10) equal and consecutive annual installments together with interest on the unpaid balance thereof at the rate of five per cent (5%) per annum. Lessee shall have the express right and privilege to pay up to and including the entire unpaid balance of any promissory note representative of the unpaid balance of the purchase price at any time after the execution thereof, without penalty. Upon payment to Lessor by Lessee of the promissory note representing the balance due on contract

to purchase, the Lessor agrees to deliver to said Lessee a fee simple deed to said lands vesting good and merchantable fee simple title in Lessee, subject only to the applicable statutory rights and reservations in effect on date of the contract to purchase and the covenant of Lessee contained in paragraph 5 above.

7) On the 8th day of September, 1969, the plaintiff exercised the aforesaid Option to Purchase granted it under the aforesaid Lease With Option to Purchase by serving notices of the exercise thereof bearing date September 8, 1969, upon the State Board of Education of the State of Florida, and upon the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida with letters to each of them, enclosing said notices, sent registered mail, return receipt requested. True copies of each of said letters and of said notice to exercise Option to Purchase are attached hereto and by reference made a part hereof respectively as Exhibits C, D and E.

8) Plaintiff has advised the defendants that it is and stands ready, willing and able to pay the required amount of the purchase price simultaneously with the execution of a contract to purchase by and between the plaintiff and the defendant and to execute said contract to purchase, as provided for in paragraph 8(b) of the aforesaid Lease With Option to Purchase, but the defendants have advised the plaintiff that they will not accept said required amount of the purchase price and will not execute, and have failed and refused to execute, said contract to purchase.

9) The plaintiff again offers, and stands ready, willing and able to pay the required amount of the purchase price simultaneously with the execution of said contract to purchase and will execute said contract to purchase.

WHEREFORE, the plaintiff prays the Court for the entry of final judgment or decree requiring that the defendants and each of them, or their successors in title and office, to specifically perform the aforesaid Lease With Option to Purchase by accepting from the plaintiff twenty percent (20%) or more, at the plaintiff's election, of the total purchase price for the aforesaid property and by simultaneously therewith executing said contract to purchase as provided for in paragraph 8(b) thereof and that plaintiff have and recover from the defendants its costs herein expended.

ANSWER TO COMPLAINT

(Number and Title omitted) (Filed December 1, 1969)

COME NOW the defendant members of the Florida Board of Trustees of the Internal Improvement Trust Fund and of the State Board of Education of the State of Florida, namely Tom Adams, Earl Faircloth, Fred O. Dickinson, Jr., Broward Williams, Doyle Conner and Floyd T. Christian as members of the defendant boards, and for answer to the complaint herein say:

1. Defendants admit the allegations in numbered paragraphs 2, 3, 4, 5, 6, 8 and 9 of the Complaint.

2. Defendants are without knowledge of the allegation in numbered paragraph 1 of the Complaint.

3. Defendants admit that the Plaintiff on September 8, 1969, attempted to "exercise" its option to purchase as alleged, but deny that Plaintiff effectively could "exercise" its option because of failure on the part of the Plaintiff to complete conditions precedent to the exercise of this option.

And for defenses to the Complaint, under Rule 12, Federal Rules of Civil Procedure, the above named Defendants allege:

First defense. Failure of inducement, in that Plaintiff corporation persuaded the Defendants to enter into an agreement for the sale of public land to Plaintiff by promising the establishment of a manufacturing plant and facilities to be used in production activities designed to strengthen the defense posture of the United States, which use of said public lands would serve the best interest of the people of the State of Florida.

Second defense. Failure of consideration, in that Plaintiff has not fulfilled the conditions promised to the State of Florida under which the offer to purchase State lands of unusual value at a nominal amount per acre was accepted by the defendant Trustees and members of the State Board of Education.

Third defense. Contrary to public policy, in that lands belonging to the people of the State of Florida are sought by the Plaintiff on the strength of an invalid agreement, the price per acre demanded by the Plaintiff not being of itself sufficient consideration to support the contract terms which the Plaintiff is asking this Court to require.

Finally, as information for the Court, Claude R. Kirk, Jr., as Governor and as a member of both boards made defendants in this suit, has requested that the Court be advised that he voted as a member of each board to comply with the request for sale by the Plaintiff corporation.

REQUEST FOR ADMISSIONS OF FACT

(Number and Title omitted) (Filed November 11, 1969)

The plaintiff, Aerojet-General Corporation, by its undersigned attorneys, pursuant to the provisions of Rule 36 of the Federal Rules of Civil Procedure, requests that the defendants and each of them, either personally or through their authorized agent or representative, make the

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following admissions of fact in writing and under oath within ten (10) days of the date of service hereof:

1) That each of the defendants presently are and constitute members of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, and the Board of Education of the State of Florida.

2) That each of the defendants are citizens of the State of Florida and are residents of Leon County, Florida.

3) That the plaintiff is a corporation duly incorporated, organized and existing under the laws of the State of Ohio.

4) That the principal place of business of the plaintiff is in a state other than the State of Florida.

5) That on the 21st day of December, 1961, the plaintiff and the then constituent Trustees of the Internal Improvement Fund of the State of Florida and the then constituent Board of Education of the State of Florida, entered into a written Lease With Option to Purchase under seal, a true and correct copy of which Lease With Option to Purchase is attached to the plaintiff's Complaint herein as Exhibit A.

6) That attached hereto and by reference made a part hereof as Exhibit I is a true and correct copy of a Notice of Bids and Public Sale, published in the Homestead News, a newspaper of general circulation in Dade County, Florida, in its editions of September 21 and 28, 1961, and October 5, 12 and 19, 1961, and proof of publication thereof dated October 19, 1961.

7) That on the 14th day of January, 1963, the plaintiff and the then constituent trustees of the Internal Improvement Fund of the State of Florida and the then constituent members of the Board of Education of the State of

Florida, entered into a written Amendment to Paragraph Three of Lease With Option to Purchase under seal, a true and correct copy of which Amendment to Paragraph Three of Lease With Option to Purchase is attached to the plaintiff's Complaint herein as Exhibit B.

8) That on the 10th day of September, 1969, the defendants, trustees of the Internal Improvement Trust Fund of the State of Florida, received from the plaintiff an original of a letter addressed to State of Florida, Board of Trustees of the Internal Improvement Fund, Elliot Building, Tallahassee, Florida, from Aerojet-General Corporation, per E. E. Nelson, Plant Manager, bearing date September 8, 1969, with enclosed original of Notice of Exercise of Option to Purchase addressed to Trustees of the Internal Improvement Fund of the State of Florida, and the State Board of Education of Florida, from Aerojet-General Corporation, per its president and secretary, bearing date September 8, 1969, true copies of which letter and Notice of Option to Purchase are attached to the Plaintiff's Complaint herein as Exhibits D and E, respectively.

9) That on the 10th day of September, 1969, the defendants-Board of Education of the State of Florida received from the plaintiff an original of a letter addressed to State Board of Education, Capitol Building, Tallahassee, Florida, from Aerojet-General Corporation, per its Plant Manager, E. E. Nelson, bearing date September 8, 1969, with enclosed copy of Notice of Exercise of Option to Purchase, addressed to Trustees of the Internal Improvement Fund of the State of Florida, and the State Board of Education of Florida from Aerojet-General Corporation, per its President and Secretary, bearing date September 8, 1969, true copies of which letter and Notice of Exercise of Option to Purchase are attached to the plaintiff's Complaint as Exhibits C and E respectively.

10) That from and since December 21, 1961, through and including the date of service upon you of these requests for admissions of fact, the plaintiff has timely paid to the defendants and the defendants have accepted and received from the plaintiff all annual rentals required of the plaintiff to be paid by Paragraph No. 2 of the aforesaid Lease With Option to Purchase, true copy of which is attached to the plaintiff's Complaint herein as Exhibit A.

11) That from and since December 21, 1961, through the date of service upon you of these requests for admissions of fact, the plaintiff has timely paid to the appropriate local public agencies and the appropriate local public agencies have received and accepted from the plaintiff all sums of money required of the plaintiff to be paid by Paragraph No. 7 of the aforesaid Lease With Option to Purchase, true copy of which is attached to the plaintiff's Complaint herein as Exhibit A.

12) That at no time since the date and time of execution of the aforesaid Lease With Option to Purchase, true copy of which is attached to the plaintiff's Complaint herein as Exhibit A, have the defendants or any of them, either personally or through their attorneys, agents, employees or representatives, given or delivered to the plaintiff any written notice of any breach by the plaintiff of or failure of the plaintiff to comply with any of the covenants contained in the aforesaid Lease With Option to Purchase, true copy of which is attached to the plaintiff's Complaint herein as Exhibit A, or of intention to cancel or of cancellation of said Lease With Option to Purchase.

13) That the defendants and each of them have failed and refused to execute or deliver to the plaintiff a contract with the plaintiff for the purchase by it of the lands described in Paragraph No. 1 of the aforesaid Lease With

Option to Purchase, true copy of which is attached to the plaintiff's Complaint herein as Exhibit A, as requested by and pursuant to the aforesaid Notice of Exercise of Option to Purchase, true copy of which is attached to the plaintiff's Complaint herein as Exhibit E.

14) That attached hereto and by reference made a part hereof as Exhibit II is a true and correct copy of a transcript of all proceedings before the trustees of the Internal Improvement Trust Fund of the State of Florida at its meeting held in The Capitol, Tallahassee, Florida, on October 21, 1969, pertaining to and relating to the aforesaid Notice of Exercise of Option to Purchase from the plaintiff the defendants.

SUPPLEMENTAL REQUEST FOR ADMISSIONS OF FACT

(Number and Title omitted) (Filed December 5, 1969)

The plaintiff, Aerojet-General Corporation, by its undersigned attorneys, pursuant to the provisions of Rule 36 of the Federal Rules of Civil Procedure, requests that the defendants and each of them, either personally or through their authorized agent or representative, make the following admissions of fact in writing and under oath within ten (10) days of the date of service hereof:

1. That at no time between the date and time of the execution of the Lease With Option to Purchase, true copy of which is attached to the plaintiff's Complaint herein as Exhibit A, and September 10, 1969, both inclusive, have the defendants or any of them, either personally or through their attorneys, agents, employees or representatives, given or delivered to the plaintiff any written notice of any breach by the plaintiff of or failure of the plaintiff to comply with any of the covenants contained in said Lease With Option to Purchase.

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2. That attached hereto and by reference made a part hereof as Exhibit I is a true and correct copy of a Notice of Bids and Public Sale, published in the Homestead News, a newspaper of general circulation in Dade County, Florida, in its editions of September 21 and 28, 1961, and October 5, 12, and 19, 1961.

REPLY TO REQUEST FOR ADMISSIONS OF FACT

(Number and Title omitted) (Filed December 1, 1969)

COME NOW the defendant State officers in this cause and by their duly designated agents under oath make the following replies to the request of the Plaintiff for certain admissions, as follows:

1. Admitted.
2. Admitted.
3. Without knowledge.
4. Without knowledge.
5. Admitted.

6. Admitted that a publication was made by the Defendants in the Homestead News in its editions of September 21 and 28, and October 5, 12 and 19, 1969, but Defendants are unable to admit or to deny that the alleged proof of publication attached as Exhibit 1 is such publication, because Exhibit 1 is illegible.

7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted.
11. Admitted.
12. Denied.
13. Admitted.
14. Admitted.

REPLY TO SUPPLEMENTAL REQUEST FOR ADMISSIONS OF FACT

(Number and Title omitted) (Filed December 17, 1969)

COME NOW the defendant State officers in this cause and by their duly designated agents under oath make the following replies to the supplemental request for admissions of fact as follows:

1. Admitted.
2. Admitted.

MOTION FOR SUMMARY JUDGMENT

(Number and Title omitted) (Filed January 20, 1970)

The plaintiff, Aerojet-General Corporation, by its undersigned attorneys, shows unto the Court that there is no genuine issue of material fact to be tried in the above-entitled cause and that the plaintiff is entitled to the entry of a summary judgment of specific performance as prayed for in the Complaint against the defendants as a matter of law, based upon the pleadings, admissions and exhibits on file herein and the affidavit of James N. Ebright attached hereto and filed herewith.

WHEREFORE, the plaintiff, Aerojet-General Corporation, under the provisions of Rule 56 of the Federal Rules of Civil Procedure, moves the Court to enter a summary judgment of specific performance as prayed for in the Complaint against the defendants and that the costs of this action be awarded to the plaintiff and against the defendants.

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SUMMARY FINAL JUDGMENT FOR PLAINTIFF AND ORDER ON MOTIONS

(Number and Title Omitted) (Filed Sept. 21, 1970)

The above cause initially came on for hearing before the Court on February 18, 1970, upon plaintiff's Motion for Summary Judgment, plaintiff's Motion to Strike certain defenses contained in the Answer of the defendants, and defendants' Motion to Dismiss the Complaint, the latter motion having been filed by the defendants along with their Answer to the Complaint. Prior thereto memorandum briefs had been submitted by plaintiff and defendants in support of their respective motions. At the conclusion of said hearing, the Court requested counsel for plaintiff and defendants to submit additional memoranda of law, and reply memoranda of law upon certain questions the Court raised. Such additional memoranda and reply memoranda were filed and thoroughly considered by the Court. Further oral argument was held before the Court on August 28, 1970, upon the aforesaid motions. The Court having now considered all of said pending motions as well as the pleadings, affidavits, admissions and exhibits on file with the Court and the concessions made by counsel for defendants in oral argument before the Court, is of the opinion and finds that there is no genuine issue of material fact to be tried in this cause and that the plaintiff is entitled to the entry of summary final judgment in its favor as a matter of law and grants the relief sought and prayed for by the plaintiff in its Complaint. The Court makes the following specific findings of undisputed material fact and conclusions of law:

Findings of Undisputed Material Fact

[1] The plaintiff is and was at the time of filing of its Complaint herein a corporation duly incorporated, organized and existing under the laws of the State of Ohio, with its principal offices and place of business in a state other than Florida. The defendants[1] are the present constituent members of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (successors in office to the Trustees of the Internal Improvement Fund of the State of Florida), and the State Board of Education of Florida, both component state agencies of the State of Florida. They are and were at the time of the filing of plaintiff's complaint herein, citizens of the State of Florida and residents of Leon County, Florida. The matter in controversy herein exceeds the sum of $10,000.00, exclusive of interest and costs.

[2] On December 21, 1961, plaintiff and the Trustees and Board of Education of Florida executed and entered into a Lease With Option To Purchase (Exhibit A to the complaint-hereinafter referred to as "Lease-Option" or "contract"). The Lease-Option recited satisfaction of all statutory requirements, performance of all prerequisites to execution of the Lease-Option, and the authority of the Trustees and Board of Education to enter into and execute the Lease-Option. The Trustees and Board of Education by that instrument leased to plaintiff approximately 25,313 acres of specifically described real estate located in Dade County, Florida, for ten years. The defendants owned fee title to the land in their respective official capacities.

1. The defendants, members of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and their predecessors in office will be hereinafter referred to as the "Trustees." The defendants, members of the State Board of Education of the State of Florida, will be hereinafter referred to as the "Board of Education."

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[3] Among the covenants of the plaintiff under the Lease-Option was its agreement: (i) to pay an annual rental in advance commencing on the date of execution of the Lease-Option and continuing on the anniversary date thereof each year thereafter in the sum of $2.50 per acre, (ii) to pay annually to the appropriate local governmental agencies a sum of money equal to, but in lieu of, the amount of ad valorem real estate taxes which would be due and payable on the leased lands if title thereto were owned in fee by the plaintiff, together with any valid special assessments levied upon the property (hereinafter referred to as "in lieu taxes") which in lieu taxes would be paid during the lease period or until purchase of the property by plaintiff was effectuated under the option to purchase granted it therein, and (iii) to commence within twelve months after the date of execution of the Lease-Option construction and installation of a manufacturing plant and associated facilities upon the leased lands or upon lands contiguous thereto owned, leased or controlled by plaintiff and in so doing to utilize the leased lands in conjunction with the operation of such manufacturing plant and associated facilities.

[4] Under paragraph 8 of the Lease-Option, the Trustees and Board of Education granted to the plaintiff the exclusive right, option and privilege to purchase all of the lands described therein "at any time within the ten (10) year lease period" for a price of $50.00 per acre, the purchase price to be determined by the number of acres multiplied by $50.00, less the amount of any unearned rent paid by the plaintiff under the lease. No specific mode or manner of exercise of said option to purchase was specified in the Lease-Option. The option to purchase allowed plaintiff an election to pay the total amount of the purchase price simultaneously with delivery to it of a deed to the property vesting good and merchantable fee sim-

ple title thereto in the plaintiff, or to pay any amount up to or in excess of 20% of the total purchase price simultaneously with the execution of a "contract to purchase" between the parties. Under said contract to purchase, a promissory note would be given by plaintiff to defendants in the amount of the unpaid balance, due and payable in ten equal, consecutive, annual installments with interest on the unpaid balance at the rate of 5% per annum. Plaintiff was granted the right to pre-pay the unpaid balance without penalty at any time, in which event the Trustees and the Board of Education would deliver to plaintiff a deed to the subject lands vesting good and merchantable fee simple title thereto in the plaintiff. Neither the Lease-Option nor the Notice of Bids and Public Sale, pursuant to which the Lease-Option was executed, contained any condition precedent to the plaintiff's exercise of the option to purchase, save its exercise during the ten-year lease period and the payment by plaintiff of the purchase price. Specifically, the Lease-Option did not contain any term, covenant or condition that plaintiff not have breached, or not be in default in the performance of any lease covenant, or that the lease be in good standing as a condition to its exercise of the option to purchase.

[5] The Lease-Option specifically provided that, upon plaintiff's exercise of the purchase option, all covenants of the lease agreement would cease, except that contained in paragraph 5, prohibiting plaintiff, except with defendants' permission, from using the property for "purposes of land speculation in any manner whatsoever" for a period of ten years next following execution of the Lease-Option.

[6] The Lease-Option specifically granted the Trustees and Board of Education the "right to cancel" the lease upon breach of or failure of plaintiff to comply with

any of the lease covenants; but only after the Trustees and the Board of Education gave plaintiff sixty days prior written notice of their intention to cancel the lease for such breach of covenant, during which period plaintiff had the right to cure such alleged breach or failure to comply with any of the lease covenants.

[7] Prior to execution of the Lease-Option, to-wit: On September 21 and 28 and October 5, 12 and 19, 1961, a Notice of Bids and Public Sale (Exhibit 1 to plaintiff's Request for Admissions of Fact—hereinafter referred to as the "Notice") was duly published in the Homestead News, a newspaper of general circulation in Dade County, Florida, in its editions of those dates, in compliance with and as provided for in Sections 270.07-270.09, *Florida Statutes*, 1961, and a Proof of Publication thereof (Exhibit I to Plaintiff's Request for Admissions of Fact) was duly executed by said newspaper and filed with the Trustees and Board of Education.

[8] On the day and in the manner specified by said Notice, plaintiff submitted the high bid on the Lease-Option offering. The parties thereafter executed and entered into a written Lease-Option agreement, the terms of which were essentially identical to the terms enumerated in said public Notice. There were minor and insignificant differences in the Notice terms and in the Lease-Option terms. The Lease-Option reserved to defendants the right to cancel the Lease-Option upon sixty days prior written notice for the alleged breach of "any" lease covenant. The Notice prescribed cancellation rights only in the event of breach of the covenant contained in paragraph 3 of the Lease-Option. This modification of terms inured to defendants' benefit. Also, the Lease-Option contained a specific procedure to be utilized by defendants in the event they sought to terminate the contract for an alleged breach by plaintiff. A sixty-day notice of default, with

opportunity to cure, was the contractual formula implemented to effect the condition in the Notice that under certain circumstances defendants could in their "discretion" terminate the Lease-Option.

Notwithstanding these minor variations, the Court finds that the terms of the Notice and of the Lease-Option were identical in substance, and that the contract here sought to be specifically enforced fairly and properly reflects and contains the terms and provisions enumerated in the Notice.

[9] On January 14, 1963, plaintiff and the Trustees and Board of Education entered into an Amendment to Paragraph Three of Lease with Option to Purchase (hereinafter referred to as "Amendment to Lease-Option"). The Amendment to Lease-Option acknowledged the expenditure by plaintiff of "considerable funds in order to commence the actual building construction and installation" of the manufacturing plant and associated facilities provided for by paragraph 3 of the Lease-Option, including extensive grading and foundation work, and further acknowledged, in essence, a "question" as to whether there had been compliance with paragraph 3 of said Lease-Option. The Amendment to Lease-Option, "in order to eliminate" any such "question", and acknowledging "that it would best serve the interests of all parties to the Agreement as well as the public interests" to grant additional time to plaintiff for commencement of construction and installation of such manufacturing plant and associated facilities, amended paragraph 3 of the Lease-Option so as to provide for commencement of such construction and installation prior to December 21, 1964. All other terms and covenants of the Lease-Option were unaffected; and they remained in full force and effect.

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[10] From and since December 21, 1961, (the date of execution of the Lease-Option), plaintiff timely paid to the Trustees and Board of Education, who received and accepted from the plaintiff all annual rentals and in lieu taxes required to be paid by the plaintiff under the Lease-Option.

[11] Plaintiff on September 8, 1969, mailed to the Trustees and Board of Education, by certified mail, return receipt requested, a written notice bearing the same date to said parties that the plaintiff was thereby exercising its option to purchase all of the subject lands under and pursuant to the provisions of paragraph 8(b) of the Lease-Option, electing to pay, as provided for therein, 20% of the total purchase price, less any unearned rent from date of closing, in cash in exchange for the simultaneous execution of the contract to purchase provided for. The plaintiff expressly waived in said notice its right to have the actual acreage determined by a survey and elected to purchase the property as containing 25,313 acres, as permitted by the Lease-Option provisions. Plaintiff advised the Trustees and the Board of Education that it was and stood ready, willing and able to pay the required amount of the purchase price and to execute said contract to purchase simultaneously with the execution by the Trustees and the Board of Education of said contract to purchase. The written notice of the exercise of the option to purchase was received by the defendants (Trustees and Board of Education) on September 10, 1969. At no time prior to the receipt of said notice of exercise of the option to purchase by them, did defendants or any of them ever deny their authority to enter into and perform under the Lease-Option nor did defendants ever advise the plaintiff or give plaintiff any written notice of any alleged breach by the plaintiff of, or its alleged failure to comply

with, any of the convenants contained in the Lease-Option. Neither the Trustees not the Board of Education ever gave any notice of intention to cancel or of the actual cancellation of said Lease-Option during that time. Nevertheless both the Trustees and Board of Education thereafter advised plaintiff that they would neither accept the required amount of the purchase price nor execute the contract of purchase. Defendants have since failed and refused to do so. At a meeting conducted by the defendants on October 21, 1969 (over a month after plaintiff's exercise of its option to purchase the subject lands), defendants averred for the first time that the plaintiff had not performed all of the lease convenants. Notwithstanding the express requirements as to method of termination of the Lease-Option above referred to, a majority of the defendants voted at that meeting to "void" the Lease-Option. Defendants for the first time on October 21, 1969, advised plaintiff that an alleged breach of paragraph 3 of the Lease-Option existed, because plaintiff's manufacturing plant (dedicated to processing large solid fuel rockets under government contracts) had to become inactive in June of 1967, although the plant was continued to be maintained in a useful condition. (See Exhibit II, Plaintiff's Request for Admissions of Fact.) In sum, defendants were then, for the first time, informing plaintiff that it had lost its right to exercise its option to purchase by reason of an alleged breach or lease covenant prior to the exercise of its option to purchase.

Conclusions of Law

[1] The Court has jurisdiction of the cause and the parties. 28 *U.S.C.* §1332. The Lease-Option was made and was to be performed in Florida; and it is undisputed that the Court must ascertain and apply the substantive law of

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Florida in this case, under the doctrine of *Erie R. Co.* v. *Tompkins*, 1938, 304 U.S. 64, 58 S.Ct. 817, 82 L. Ed. 1188.

[2] Procedurally, the case is before the Court on Defendants' Motion to Dismiss Plaintiff's Complaint and Plaintiff's Motion to Strike Affirmative Defenses and for Summary Final Judgment. The material facts have been stipulated to or admitted by defendants and the issues on both the motion to dismiss and motion for summary judgment are issues solely of law. The Court finds that plaintiff is entitled to summary final judgment; and so it is unnecessary to rule on Plaintiff's Motion to Strike.

[3] The Court has imposed on itself and counsel the duty to ascertain and apply to these facts the available case law on the issues herein, to the end that the interests and rights of the people of Florida and the parties litigant are properly protected. Though Florida case law is not abundant on the issues here presented, it is sufficient to guide this Court to its decision. Resort need not be had to foreign law, although it is equally corroborative of the Court's conclusions here.

[4] It is conceded by defendants that the Trustees and the Board of Education have complete authority and discretion to convey and dispose of lands held by them in such manner as in their judgment may be most advantageous. (See, *Florida Statutes*, §§253.18, 253.02, 229.08, 270.-07 and 270.09; *Trustees of the Internal Improvement* v. *Root*, Fla. 1912, 58 So. 371; *Everglades Sugar & Land Co.* v. *Bryan*, Fla. 1921, 87 So. 68; Defendants' Reply Memorandum, p. 8.)

[5] Defendants have likewise conceded that the notice provisions contained in Chapter 270, Florida Statutes, were followed; and there is no bar on plaintiff's claim arising out of the requirements of those statutes. That is, it is conceded that defendants had authority to lease the lands

and grant an option to plaintiff to purchase them, that a lease with option to purchase of defendants' lands is a "disposition" of them within the meaning of §270.07, F.S.; and that publication of the terms and conditions of the authority to accept bids for a Lease-Option of these lands was duly and regularly had, and plaintiff timely and properly made the high bid. It is further conceded and the Court concludes that the subsequent amendment to the time requirement in paragraph 3 of the Lease-Option did not require republication (see Defendants' Reply Memorandum, p. 8). There existed throughout a valid subsisting agreement granting to plaintiff an option to buy the property involved on fixed terms and prices, and the amendment in no way affected that agreement. The amendment was merely an exercise of discretion vested in defendants by the contract to alter the time requirements for performance of paragraph 3 of the lease. It was a written clarification regarding the then status of performance of one aspect of one lease covenant, an aspect about the performance of which there admittedly existed some "question" and which defendants chose not to litigate or otherwise pursue.

[6] With admirable candor, defendants have conceded that their defense is based upon their assertion that the manufacturing plant and facilities built by plaintiff on lands here involved, or contiguous thereto, is at this time not under full operation; but rather it is merely being maintained on an inactive status due to the current slowdown in solid fuel rocket development (see, Defendants' Reply Memorandum, p. 8).

[7] When the State of Florida or one of its component agencies, enters into a contract with private persons, the same legal rules and principles apply to and govern the parties' rights under the contract. State agencies

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enjoy no privileged status affecting either their contractual rights or liabilities. *Daniel* v. *Sherrill*, Fla. 1950, 48 So. 2d 736; *McCarthy* v. *Booth*, Fla. 1954, 69 So. 2d 655; *Gay* v. *Southern Builders, Inc.*, Fla. 1953, 66 So. 2d 499. In construing this Lease-Option, therefore, the Court may look to Florida law on such contracts without regard to the public or private capacities of the parties involved.

[8] The contract of the parties is a "Lease With Option to Purchase," in which there was a mutual exchange of undertakings, promises and covenants, more detailed enumeration of which is unnecessary. It suffices to say that mutually enforceable promises may constitute valid consideration for each other, and that this contract was supported by legal consideration. *Jones* v. *McCallum*, (Fla. 1885), 21 Fla. 392; *Chamberlain* v. *Lesley*, (Fla. 1897), 39 Fla. 452, 22 So. 736; *Walters* v. *Miller*, (Fla. 1915), 70 Fla. 432, 70 So. 629; *Foreman* v. *First National Bank*, (Fla. 1918), 76 Fla. 48, 79 So. 742; *Jenkins* v. *City Ice & Fuel Co.*, (Fla. 1935), 118 Fla. 795, 160 So. 215; *Texas Co.* v. *Pensacola Maritime Corp.*, 279 F. 19 (5th Cir. 1922); *Miami Coca-Cola Bottling* v. *Orange Crush Co.*, 296 F. 693 (5th Cir. 1924). The terms of the lease and the terms of the option were in some ways related, and in some ways independent of each other; but the exchange of mutually enforceable promises constituted consideration for both the lease and the option agreements. See, *Sisco* v. *Rotenberg*, (Fla. 1958), 104 So. 2d 365; Cf. 32 *American Jurisprudence*, Landlord and Tenant, §299.

[9] Defendants' principal defense is predicated on their contention which plaintiff must admit for purpose of the pending motions, that at the time plaintiff gave notice of exercise of the option its manufacturing plant and associated facilities were not in operation, but were merely being maintained by a 14-man maintenance staff. Defend-

ants have characterized their legal defense as "failure of consideration", "failure to perform conditions precedent", and "time is the essence of an option contract". Whatever label the defense should take the court must decide whether this asserted fact constitutes under any legal theory a defense to plaintiff's claim. The Court concludes as a matter of law that it does not.

[10] The "failure of consideration" theory clearly does not apply in this case. In *Jones* v. *McCallum*, (1885), 21 Fla. 392, the Florida Supreme Court decided under what circumstances a contract could be avoided due to failure of consideration. McCallum agreed with Jones to write editorials and lend counsel to Jones in a newspaper enterprise; and Jones agreed to pay McCallum $1,000.00. McCallum died within days after the agreement and prior to performance of *any* services under the contract. His widow sought payment under a provision requiring payment to her in case McCallum died. The Florida Supreme Court held that recovery could be had if McCallum had performed *any* services under the contract; but since *no* services had been rendered prior to his death, the consideration for the agreement had failed and the promise of Jones was discharged.

Applying that rule here it is clear that consideration has not failed. Plaintiff has paid rental each year when due and has paid "in lieu" ad valorem taxes. Plaintiff has further become obligated to pay the $1,265,000.00 purchase price. Consideration has not "failed" here. Moreover, its alleged failure was not asserted until long after plaintiff had exercised its option to purchase which terminated the lease and all of the covenants thereunder save only that against land speculation until December 21, 1971 (paragraph 5 of Lease-Option).

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[11] The "condition precedent" argument is that the option to purchase was conditioned on there being no breach of any lease covenant at the time plaintiff gave notice of exercise of the option. Defendants argue that plaintiff's manufacturing facilities were not in operation when the option was exercised and therefore plaintiff was not entitled to exercise and is not entitled to purchase.

An option contract is not a contract of sale. "[I]t is a unilateral contract which gives the option holder the right to purchase under the terms and conditions of the option agreement. *South Inv. Corp.* v. *Norton,* (Fla. 1952) 57 So. 2d 1, 2. Thus, the Court must look to "the terms and conditions of the option agreement" to ascertain whether good standing under the lease is a *condition* of the option agreement.

The parties' agreement speaks for itself, and it makes very clear the relationship of option terms and lease covenants. The lease covenants are contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 10 and 11; and the option terms are contained in paragraphs 2, 4, 5, and 8. The agreement specifically provides in paragraph 4, that:

> "It is mutually understood and agreed that this lease shall terminate if option to purchase said lands hereinafter granted by Lessor to Lessee is exercised by Lessee *and in such event no covenant herein made on the part of the Lessee shall extend beyond such termination of this lease excepting the covenant of Lessee contained in Paragraph 5 next below."*[2]

And in paragraph 8, the agreement is that:

"The Lessor herewith grants to the Lessee the exclusive right, option and privilege to purchase all of the

2. All emphasis supplied unless otherwise indicated.

land described herein *at any time within the ten (10) year lease period* at and for the price of Fifty Dollars ($50.00) per acre . . . ."

These two contract provisions explicitly define the nature of the option plaintiff received under this contract. Its terms are simple and they are *independent* of the lease covenants except as specified. Plaintiff had the option to purchase the lands during the lease term for a designated price upon terms designated in paragraph 8. If and when plaintiff exercised its option in the manner required by law the contract specifically provided that the "lease shall terminate" and that "no covenant herein made on the part of Lessee shall extend beyond such termination of this lease excepting the covenant" not to use the lands for speculative purposes within ten years after execution of the contract. Under this contract, paragraph 3 and all other lease covenants (save one) expire and are of no further effect when the option is exercised.

The contract (including both the "lease" terms and the "option" terms) provides no other conditions to the exercise of the option and the law implies none. Insofar as lease covenants are concerned the contract makes termination for default in performance of breach of lease covenants only an alternative which defendants may utilize *in their discretion*[3] if they conclude that the lease is being breached. The contract requires specific action to be taken to declare default in any lease covenant and terminate the agreement, furthermore, and does not contain an automatic default or reverter provision. The contract rather requires that, in the event defendants desired to declare default or terminate the contract they were required to

3. This is the terminology used in the notice of authority to accept bids, which was reduced to a specific procedure in the contract.

give notice of such alleged breach and to give plaintiff sixty days in which to *cure* any default.

The record is undisputed that defendants have never given a sixty day notice of default; and they gave no notice of default of any kind from the commencement of the lease term through the time plaintiff exercised the purchase option. It would be inequitable to allow defendants to avoid now the contract when plaintiff had never been given notice of default and had never been given opportunity to cure any default—an opportunity defendants were bound to afford to plaintiff before the Lease-Option could be terminated.

In sum, paragraph 3 and all other lease terms save one were covenants of the lease for breach of which defendants had power to terminate the Lease-Option; but they were not, either by bylaw or by contract, *conditions* of the option or conditions precedent to its exercise. Defendants cannot after the exercise of the option to purchase, validly avoid the option by then asserting for the first time a prior alleged breach of a covenant of the lease wherein the option was granted. E.g., *Gassert* v. *Anderson,* (Minn. 1937) 276 N.W. 808; *Keogh* v. *Peck,* (Ill. 1925) 147 N.E. 266; *Chapman Drug Co.* v. *Chapman,* (Tenn. 1960) 341 S.W. 2d 392; *Padilla* v. *Sais,* (N.Mex. 1966) 76 N.M. 247, 414 P.2d 223; *Reynolds* v. *Earley,* (N.C. 1955) 241 N.C. 521, 85 S.E. 2d 904; *Shannon* v. *Jacobson,* (Mass. 1928) 262 Mass. 463, 160 N.E. 245; Cf., *South Inv. Corp.* v. *Norton,* supra. Accordingly, plaintiff had the right to exercise its option throughout the lease term unless and until defendants properly and in conformity with its terms, terminated the lease and the option to purchase therein granted, or, at lease gave proper notice of default or breach.

[12] Defendants have argued that "time is the essence of an option contract" in conjunction with their as-

sertion that plaintiff has ceased operations at the manufacturing plant. The reasoning applicable to the "condition precedent" argument disposes of this theory. Time is admittedly the essence of an option in that the term of the option limits the optionee's right to exercise. Under the Lease-Option plaintiff's right to exercise the option survived for the lease term, which term ended after ten years or upon proper termination after declaration of default by defendants. Therefore, the undisputed fact that plaintiff exercised the option prior to any such declaration of default disposes of this theory.

[13] Where one holds an option based on a valid consideration to purchase real estate and desires to exercise the option to buy, he must definitely accept the proposition by notifying the vendor of such decision within the time specified on the terms named. *Orlando Realty Board Building Corp.* v. *Hilpert,* (Fla. 1927), 113 So. 100. When an option to buy lands is definitely accepted, it ceases to be an option and ripens into a mutually binding and enforceable contract, the terms of which are identical to those contained in the option. *Ibid; Behrman* v. *Max,* (Fla. 1931), 137 So. 120. The Court concludes as a matter of law that the written notices of exercise dispatched by plaintiff to defendants on September 8, 1969, were timely and proper and constituted exercise by plaintiff of its option in accordance with the option terms contained in the contract. Accordingly, on September 10, 1969 (the date defendants received this notice), the option ripened into a mutually binding and enforceable contract for sale; and the landlord-tenant relationship between the parties ceased. Defendants attempted cancellation of the contract given thereafter is and was null and void and of no force or effect.

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[14] The contract provides in paragraph 8(b) that plaintiff's initial payment of not less than 20% of the purchase price becomes due and payable at such time as the parties execute a contract to purchase. It was not necessary that plaintiff tender actual payment of that sum in order to bring this action. *Sisco* v. *Rotenberg*, supra. It suffices that plaintiff advised defendants and the Court, as it did, that plaintiff was ready, willing and able to perform its contractual obligations. There has been no question raised of plaintiff's ability to perform.

[15] In their Answer defendants asserted affirmatively the defense of "failure of inducement", which defense the Court concludes is insufficient as a matter of law.

[16] In their Answer defendants asserted affirmatively the defense that the contract was contrary to public policy. On the undisputed facts, that defense is as a matter of law insufficient. A contract is not void as against public policy unless it is injurious to the interests of the public, or contravenes some established interest of society. 7 *Florida Jurisprudence*, Contracts, §62. That is, contracts void as contrary to public policy are so because they are either agreements to effect some unlawful or socially repugnant end, or agreements to effect some lawful end by unlawful or socially repugnant means. See, 6A *Corbin on Contracts*, §1373, p. 2. This contract fits in neither category. It was entered by defendants as public officials pursuant to legislative authority hereinbefore cited.

[17] Defendants also asserted by way of motion to dismiss the complaint filed along with their Answer to the complaint, that the contract is not sufficiently definite in its terms to be specifically enforced. This contention, the Court concludes, is without merit. The option to purchase granted the plaintiff which became a binding con-

tract of sale and purchase upon plaintiff's exercise of its option, contained all of the essential provisions of a contract for sale of land, i.e. (1) the property to be conveyed and the interest therein to be conveyed is definitely described; (2) the purchase price is definite and specific; and (3) the time and terms of payment of the purchase price are definite. *Edwards* v. *Rives,* (Fla. 1895) 17 So. 416; *Florida Yacht Club* v. *Renfroe,* (Fla. 1914) 64 So. 742; *Dixie Naval Stores Co.* v. *German-American Lumber Co.,* (Fla. 1918) 79 So. 836. The fact that the contract in question provided alternatively at plaintiff's election, for an all cash payment simultaneously with delivery to plaintiff of a deed or a cash down payment simultaneously with execution of a deed, with the balance of the purchase price to be payable over a definite period of time pursuant to a promissory note given by plaintiff to defendants, does not preclude the contract from being specifically enforced. *Taylor* v. *Mathews,* (Fla. 1907) 44 So. 146. The elements urged by defendants that are not specifically covered in the contract are not essential elements of a contract to purchase. As to these, absolute certainty or definiteness is not required (29A, *Fla. Jur.,* Specific Performance, §40, pp. 633, 634) and each may be supplied or reduced to certainty by legal rules and presumptions. *Daubmyre* v. *Hunter,* (Fla. 1923) 98 So. 69; *Stone* v. *Austin,* (2nd DCA 1958) 107 So. 2d 232.

[18] The equities herein are with the plaintiff. It would be inequitable to now deny plaintiff the rights accorded it under the parties' contract. Specific performance is an appropriate and necessary remedy. There is no genuine issue as to any material fact and plaintiff is entitled to judgment as a matter of law.

Accordingly, it is

ORDERED AND ADJUDGED as follows:

[1] Plaintiff's Motion For Summary Judgment be and the same hereby is granted; and final judgment be and the same hereby is entered in favor of plaintiff and against defendants for the relief sought in the complaint. Defendants are hereby ordered and directed within thirty days from the date of entry of this order, to execute a contract of purchase covering the lands described in paragraph No. 1 of the Lease-Option in accordance with the terms of paragraph 8(b) thereof unless by agreement all parties extend such thirty days time limit. Defendants are further hereby ordered and directed to accept payment by plaintiff on any amount equal to or in excess of twenty percent (20%) of the total purchase price simultaneously with execution of said contract to purchase; and to accept a promissory note for an amount equal to the unpaid balance of the purchase price, and to accept payments, including any advance payments, made thereunder in accordance with paragraph 8(b) of the contract; and upon payment by plaintiff of the balance and entirety of the contract purchase price, defendants are further hereby ordered and directed to deliver to plaintiff a fee simple deed to said lands vesting good and merchantable fee simple title to plaintiff, subject to applicable statutory rights and reservations as provided for in paragraph 8(b) of the Lease-Option. Should plaintiff elect at or prior to the time herein prescribed for closing to pay the total amount of the purchase price of said lands, the defendants are ordered and directed to receive from the plaintiff the total amount of purchase price for said lands in cash and to simultaneously therewith execute and deliver to the plaintiff a deed vesting in the plaintiff good and merchantable fee simple title to said lands, subject only to applicable statutory rights and reservations as provided for in paragraph 8(a) of the Lease-

Option. The covenant contained in Paragraph 5 of the Lease-Option remains in full force and effect to the same extent and in the same manner as if the contract had been performed without necessity for Court ordered specific performance.

[2] Defendants' Motion to Dismiss be and the same hereby is denied.

[3] The parties will bear their own costs.

[4] The Court retains jurisdiction of this cause for the purpose of entering such further order or orders as may be necessary and appropriate to enforce the provisions of this judgment.

DONE AND ORDERED in Chambers in Tallahassee, Florida, this 21st day of September, 1970.

LEASE WITH OPTION TO PURCHASE

THIS AGREEMENT made and executed this 21st day of December, 1961, by and between the State of Florida, by and through the Trustees of the Internal Improvement Fund of the State of Florida, and the State Board of Education of Florida, component state agencies of the State of Florida, with offices located in Tallahassee, Leon County, Florida, and Aerojet-General Corporation, a corporation organized and existing under the laws of the State of Ohio, with principal place of business in Azusa, Los Angeles County, California,

WITNESSETH:

WHEREAS, the Trustees of the Internal Improvement Fund of the State of Florida and the State Board of Education of Florida are vested with title to certain State lands located in Dade County, Florida, and are charged with the administration, management, control, supervision, conservation and protection of these lands, and

WHEREAS, said aforementioned Government agencies have been advised by Aerojet-General Corporation that it has a need for a large tract of land, a part of which consists of these State lands, for the purpose of establishing a manufacturing plant and associated facilities to be used in production activities which are designed to strengthen the defense posture of the United States, and

WHEREAS, the best interests of the people of the State of Florida will be served by said State lands being devoted to such usage, the aforementioned government agencies have heretofore, in compliance with statutory requirements of the State of Florida, taken such action as is necessary to permit such a use of said State lands as aforesaid, and

WHEREAS, all statutory requirements have been satisfied and other necessary action taken, the Trustees of the Internal Improvement Fund of the State of Florida and the State Board of Education of Florida, component state agencies of the State of Florida, are authorized and empowered to enter into this Agreement and to authorize its execution.

NOW, THEREFORE, IT IS MUTUALLY UNDERSTOOD AND AGREED that for and in consideration of the sum of TEN DOLLARS ($10.00) paid by each party hereto to the other, receipt of which the parties each and severally acknowledge and in further consideration of the

mutual covenants of the respective parties hereto, it is hereby agreed by and between the Trustees of the Internal Improvement Fund of the State of Florida, and the State Board of Education of Florida, component state agencies of the State of Florida, hereinafter referred to as "Lessor" and Aerojet-General Corporation, hereinafter referred to as "Lessee", as follows:

1. That the Lessor hereby leases to the Lessee the following described land, situate in Dade County, Florida, the ownership of said land being indicated opposite the description:

STATE-OWNED LANDS IN THE HOMESTEAD AREA

Sections	Acres*	Ownership
1 thru 14—T56S-R37E	8960	Trustees, I.I.F.
15 & 16—T56S-R37E	1280	Board of Education
17 thru 20—T56S-R37E	2560	Trustees, I.I.F.
21 thru 23—T56S-R37E	1920	Board of Education
24 thru 36—T56S-R37E	8320	Trustees, I.I.F.
16—T57S-R37E	640	Board of Education
W½ of 5—T59S-R38E	328	Trustees, I.I.F.
6—T59S-R38E	665	Trustees, I.I.F.
16—T59S-R38E	640	Board of Education
TOTAL ACREAGE	25,313	

*Acreages listed are based upon a presumption of 640 acres per section, but in the event the Lessee desires a more accurate total acreage it is hereby granted the right and privilege of having the land surveyed by a certified public land surveyor, at its own expense, to be approved by the Lessor and the total acreage shown as a result of such survey shall be considered the correct total acreage in lieu of the total acreage shown herein.

TO HAVE AND TO HOLD the same unto the said Lessee, its successors and assigns for a period of ten (10) years from date hereof upon the following terms and conditions:

2. The Lessee agrees to pay an annual rental for said land of an amount equal to the sum of TWO DOLLARS AND FIFTY CENTS ($2.50) per acre for the period of the lease unless this lease is sooner terminated or cancelled as herein provided for. The annual rental herein

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agreed to be paid shall be due and payable in advance, the first such payment to be on execution of this Agreement with subsequent payments to be made on each anniversary date thereafter.

3. The Lessee herewith agrees and covenants to commence within twelve (12) months after the execution hereof, the construction and installation of a manufacturing plant and associated facilities on said land or upon lands contiguous thereto owned, leased or controlled by Lessee and in so doing to utilize the aforementioned described land in conjunction with the operation of such manufacturing plant and associated facilities.

4. The Lessor shall have the right to cancel this lease upon breach or failure of Lessee to comply with any of the covenants herein agreed to be kept or performed by Lessee. However, in the event of such breach or failure on the part of Lessee, Lessor shall give Lessee sixty (60) days notice, in writing, of its intention to cancel this lease and thereupon, unless such breach or failure be cured by Lessee within said sixty (60) day period, this lease and the terms hereof shall expire and come to an end on the date fixed in such notice as if the said date were the date originally fixed in this lease for the expiration thereof.

It is mutually understood and agreed that this lease shall terminate if option to purchase said lands hereinafter granted by Lessor to Lessee is exercised by Lessee and that in such event no covenant herein made on the part of Lessee shall extend beyond such termination of this lease excepting the covenant of Lessee contained in paragraph 5 next below.

5. The Lessee agrees and herewith covenants that the land herein leased and for which an option to purchase is herein granted shall not be used by Lessee for purposes

of land speculation in any manner whatsoever for a period of ten (10) years next following the execution of this Agreement without written approval of Lessor first had and obtained.

6. It is mutually agreed that all improvements of every kind and nature placed upon the lands during the term of lease shall, in all legal intendment, as between parties, be deemed and considered personal property of Lessee. Upon expiration or cancellation of this Lease, either Lessee shall have removed all such improvements providing Lessee at the time of such removal or removals has complied with all the terms and conditions of this Lease, or in the alternative, Lessee may elect to abandon such improvements, in which event title thereto shall pass to Lessor.

7. The Lessee further agrees and obligates itself to pay annually to the appropriate local public agencies a sum of money equal to, but considered as in lieu of, any and all ad valorem taxes which would be due and payable on all the lands described herein if title thereto were owned in fee by the Lessee; also, to pay any valid special assessment levied on said land. Said annual payments shall be paid by Lessee during the lease period or until purchase of said lands by Lessee is effectuated as provided for herein. The procedure for compliance with the provisions of this paragraph shall be the responsibility of the Lessee in cooperation with the local government agencies affected.

8. The Lessor herewith grants to the Lessee the exclusive right, option and privilege to purchase all of the land described herein at any time within the ten (10) year lease period at and for a price of Fifty Dollars ($50.00) per acre. In the event the Lessee exercises its right, option and privilege to purchase the above described land,

the purchase price of said land to be determined by the number of acres multiplied by Fifty Dollars ($50.00), less the amount of any unearned rent paid by Lessee under the terms of this lease shall be payable as follows:

(a) Upon the election of Lessee, the total amount of the purchase price to be determined, as aforesaid, shall be paid to Lessor simultaneously with delivery to Lessee of a deed to said lands vesting good and merchantable fee simple title thereto in Lessee subject only to applicable statutory rights and reservations in effect on date of conveyance and the covenant on the part of Lessee to be kept and performed contained in paragraph 5 above, or

(b) Upon election of Lessee, the payment of any amount equal to or in excess of twenty per cent (20%) of the total purchase price to be determined, as aforesaid, shall be paid to Lessor simultaneously with the execution of a contract to purchase by and between the parties hereto, which contract to purchase shall provide for a promissory note for an amount equal to the unpaid balance due to Lessor from Lessee for purchase price of said lands described herein, which note shall be paid to Lessor by Lessee in ten (10) equal and consecutive annual installments together with interest on the unpaid balance thereof at the rate of five per cent (5%) per annum. Lessee shall have the express right and privilege to pay up to and including the entire unpaid balance of any promissory note representative of the unpaid balance of the purchase price at any time after the execution thereof, without penalty. Upon payment to Lessor by Lessee of the promissory note representing the balance due on contract to purchase, the Lessor agrees to deliver to said Lessee a fee simple deed to said lands vesting good

and merchantable fee simple title in Lessee, subject only to the applicable statutory rights and reservations in effect on date of the contract to purchase and the covenant of Lessee contained in paragraph 5 above.

9. This Lease shall not be subject to assignment on the part of Lessee without written approval of Lessor first had and obtained.

10. The Lessee shall save Lessor harmless from any liability to any third person or property which might result from operations conducted by Lessee under the terms of this Lease prior to exercise of option herein granted to purchase the land herein described.

11. Lessee agrees and obligates itself to grant to the Central and Southern Florida Flood Control District, or its successor, such easements and rights of entry upon the lands herein described as will be needed or required to make or cause to be made and constructed thereon such canals, cuts, sluiceways, dikes and other works as might, in the judgment of the said Flood Control District or its successor, be nec- [sic] grant to the said Flood Control District, or its successor, the right to take from the said land and to use such gravel, stone or earth as might, in the judgment of the said Flood Control District, or its successor, be necessary to use in the construction of said canals, cuts, sluiceways, dikes and other works upon said land for the purposes hereinbefore set forth.

IN WITNESS WHEREOF the Trustees of the Internal Improvement Fund and the State Board of Education, hereinabove referred to as Lessor, have hereunto set their hands and affixed their respective seals and the seal of the Commissioner of Agriculture of the State of Florida and the Aerojet-General Corporation, hereinabove referred to as Lessee, has caused its name to be signed by its duly

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authorized officers and attested by its Secretary and affixed its corporate seal, in triplicate, the day and year first above written.

AMENDMENT TO PARAGRAPH THREE OF LEASE WITH OPTION TO PURCHASE

WHEREAS, on December 21, 1961, the Trustees of the Internal Improvement Fund of the State of Florida and the State Board of Education of Florida, as Lessor, entered into a Lease with Option to Purchase with Aerojet-General Corporation, as Lessee, for certain land situate in Dade County, Florida, and comprising approximately 25,313 acres, and

WHEREAS, Lessee, in Paragraph Three of the Lease with Option to Purchase above referred to, agrees and covenants to commence construction and installation of a manufacturing plant and associated facilities on the lands described in the Agreement or upon lands contiguous thereto, owned, leased or controlled by Lessee, within twelve months from the date of execution of said Lease with Option to Purchase, and

WHEREAS, prior to December 21, 1962, Lessee expended considerable funds in order to commence the actual building construction and installation of such facilities, including extensive grading and foundation work; however, in order to eliminate any question as to whether Paragraph Three has been complied with, Lessee has heretofore submitted formal request to Lessor for modification of Paragraph Three of the instrument of Lease with Option to Purchase so as to grant an additional period of time of two years within which to commence construction and installation of a manufacturing plant as provided in this paragraph, and

WHEREAS, the Trustees of the Internal Improvement Fund and the State Board of Education of Florida did consider this request at the meetings of said agencies held on October 9, 1962, and did determine and agree that it would best serve the interests of all parties to the Agreement as well as the public interest to approve this request for additional time,

NOW, THEREFORE, that for and in consideration of the sum of TEN DOLLARS ($10.00) paid by each party hereto to the other, receipt of which the parties each and severally acknowledge, and in further consideration of the mutual covenants of the respective parties hereto, it is hereby agreed by and between the Trustees of the Internal Improvement Fund of the State of Florida and the State Board of Education of Florida, component state agencies of the State of Florida, referred to in the above mentioned Lease with Option to Purchase as "Lessor", and Aerojet-General Corporation, referred to in same as "Lessee", as follows:

1. That Paragraph Three of said Lease with Option to Purchase dated December 21, 1961, by and between the parties hereto, be and the same hereby is amended in its entirety to read as follows:

> "3. The Lessee herewith agrees and covenants to commence prior to December 21, 1964, the construction and installation of a manufacturing plant and associated facilities on said land or upon lands contiguous thereto owned, leased or controlled by Lessee and in so doing to utilize the aforementioned described land in conjunction with the operation of such manufacturing plant and associated facilities."

2. That, except as provided in Paragraph One above, all of the terms, covenants, and conditions of said Lease

with Option to Purchase dated December 21, 1961, shall remain the same.

IN WITNESS WHEREOF, the Trustees of the Internal Improvement Fund and the State Board of Education, hereinabove and in said Lease with Option to Purchase referred to as Lessor, have hereunto set their hands and affixed their respective seals and the seal of the Commissioner of Agriculture of the State of Florida and Aerojet-General Corporation, hereinabove and in said Lease with Option to Purchase referred to as Lessee, has caused its name to be signed by its duly authorized officers and attested by its Secretary and affixed its corporate seal, in triplicate, this *14th* day of January, 1963.

NOTICE, BIDS TO BE RECEIVED, PUBLIC SALE

In pursuance of authorizations by the State Board of Education of Florida and Trustees of the Internal Improvement Fund of the State of Florida, respectively, competitive bids will be received at 10:00 A.M. (E.S.T.), on *OCTOBER 24, A.D., 1961,* in the Board Room of the Governor's Office in the State Capitol Building, Tallahassee, Florida for a ten-year lease with option to purchase, subject to provisions set forth herein, all of the following described lands in Dade County, Florida, to-wit:

Description	Twp. S.	Rge. E.	Acreage	Owner
Sections 1 through 14	56	37	8960	Tr. I.I. Fund
Sections 15 and 16	56	37	1280	Bd. of Ed.
Sections 17 through 20	56	37	2560	Tr. II. Fund
Sections 21 through 23	56	37	1920	Bd. of Ed.
Sections 24 through 36	56	37	8320	Tr. II. Fund
Section 16	57	37	640	Bd. of Ed.
W½ of Section 5	59	38	328	Tr. II. Fund
Section 6	59	38	665	Tr. II. Fund
Section 16	59	38	640	Bd. of Ed.

Total acreage including estimated area of unsurveyed sections - - - 25,313 acres,

which ten-year lease with option to purchase, if awarded, will require lessee-optionee to make payment of rental

annually in advance during the lease term at the rate per acre at which award is made, also to make payment during the lease term to appropriate public agencies of an annual sum equal to any and all ad valorem taxes which would be due and payable if all of said lands and improvements thereon were owned in fee simple by such lessee-optionee. Under the lease-option lessee-optionee may during its ten-year term consummate purchase of all of said lands at the price bid and upon which award is made by full payment of total purchase price for deed, or by execution of purchase contract whereunder 20% of total purchase price shall be payable in cash on execution of contract, with balance in ten equal consecutive annual installments with interest on unpaid balance at 5% per annum. Neither the lease-option nor purchase contract will be subject to assignment without formal approval of both the Board of Education and said Trustees. Instrument of conveyance will contain all applicable statutory rights and reservations in effect on its date. Lessee-optionee will be required by covenant to commence, within a reasonable period of time, construction and installation of a manufacturing plant and associated facilities on said land or upon lands contiguous thereto and owned, leased or controlled by lessee-optionee, and to utilize above described land for operation of its manufacturing plant and associated facilities, and shall not, during the full period of ten years from date of the lease-option use any of said land for land speculation purposes without formal approval of both of the two said State Boards.

Bids must specify offer for both (1) annual lease rental per acre and (2) price per acre for option to purchase.

Bids for lease-option of less than the entire acreage above described will not be eligible for consideration.

Mailed bids must be directed to the State Land Office, Room 114, The Capitol, Tallahassee, Florida, and each mailed bid accompanied by certified or cashier's check in amount equal to the annual rental as bid for the entire acreage, payable to "Board of Education and Trustees of Internal Improvement Fund." Bidders may attach brief statement of nature of their intended operations for use of said lands. A purpose of this offering is to motivate establishment of facilities and production in the interest of the economy of Florida and National defense.

Oral competitive bidding for lease-option of the entire acreage (public auction) is scheduled to commence at the time and place stated first above, following the opening and reading of all mailed bids. The highest mailed bid, in compliance with the requirements herein, will become the starting offer for oral bidding from the floor. Bidders present may raise their written or oral offers. Highest bidder will be required to sign memorandum evidencing such bid and submit certified or cashier's check in amount not less than the annual rental for one year for the entire acreage within 24 hours after award is made.

The right to reject any and all bids is reserved. Checks submitted by unsuccessful bidders will be promptly returned after consideration of the bids. In the event of award and upon execution of the lease-option the check tendered by the successful bidder will be credited as paid rental for the period of time covered by such amount.

In the event an award is made and development and use for said purpose shall not be commenced within twelve months after date of lease-option, the said lease-option will then become subject to cancellation at the discretion of the two State owner-boards.

The above described lands include unsurveyed sections and estimated acreage and lessee-optionee will have the right by field survey made at the expense of lessee-optionee and by a Registered Land Surveyor or Certified Public Land Surveyor, approved by the two State Board, to establish a more accurate total acreage. In such event subsequent rentals or purchase payments shall be adjusted in accordance with the corrected total acreage.

BY ORDERS of the State Board of Education and Trustees of the Internal Improvement Fund.

September 8, 1969

State Board of Education
Capitol Building
Tallahassee, Florida
Attention: Mr. Floyd T. Christian
Commissioner of Education

Reference: Lease with Option to Purchase dated December 21, 1961, between Trustees of the Internal Improvement Fund of the State of Florida and the State Board of Education of Florida, as Lessors, and Aerojet-General Corporation, as Lessee

Gentlemen:

Aerojet-General Corporation has elected to exercise its option to purchase the lands which are the subject of the above lease.

We are enclosing herewith a copy of this notice of Exercise of Option to Purchase, the original of which has been forwarded to the State of Florida, Board of Trustees of the Internal Improvement Fund.

We would appreciate your advice as to the procedure you wish to follow in the closing of this transaction.

Very truly yours,

AEROJET-GENERAL CORPORATION

E. E. Nelson
Plant Manager

September 8, 1969

State of Florida
Board of Trustees of the
Internal Improvement Fund
Elliot Building
Tallahassee, Florida

Attention: Mr. James T. Williams, Chief
State Land Office

Reference: Lease with Option to Purchase dated December 21, 1961, between Trustees of the Internal Improvement Fund of the State of Florida and the State Board of Education of Florida, as Lessors, and Aerojet-General Corporation, as Lessee

Gentlemen:

Aerojet-General Corporation has elected to exercise its option to purchase the lands which are the subject of the above lease.

We are enclosing herewith a formal Notice of Exercise of Option to Purchase. We would appreciate your advice as to the procedure you wish to follow in the closing of this

transaction. We are today forwarding to the State Board of Education a copy of the enclosed notice.

Very truly yours,

AEROJET-GENERAL CORPORATION

E. E. Nelson
Plant Manager

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RECORD VOLUME II

In the
United States Court of Appeals
for the Fifth Circuit

No. 31,018

CLAUDE R. KIRK, JR., et al.,
Defendants-Appellants,

vs.

AEROJET-GENERAL CORPORATION,
Plaintiff-Appellee.

Appeal from the United States District Court for the Northern District of Florida, Tallahassee Division

SUPPLEMENTAL APPENDIX OF APPELLEE

GEORGE W. WRIGHT, JR.
KARL B. BLOCK, JR.
1600 First National Bank Bldg.
Miami, Florida
Counsel for Appellee

MERSHON, SAWYER, JOHNSTON,
DUNWODY AND COLE
1600 First National Bank Bldg.
Miami, Florida
Of Counsel for Appellee

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SUPPLEMENTAL APPENDIX OF APPELLEE

RELEVANT DOCKET ENTRIES OF PROCEEDINGS IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION

	Filed
Complaint for Specific Performance	October 21, 1969
Request for Admissions of Fact	November 11, 1969
Answer to Complaint	December 1, 1969
Reply to Request for Admissions of Fact	December 1, 1969
Supplemental Request for Admissions of Fact	December 12, 1969
Reply to Supplemental Request for Admissions of Fact	December 17, 1969
Motion for Summary Final Judgment	January 20, 1970
Stipulation	May 26, 1970
Defendants' Reply Memorandum	June 15, 1970
Summary Final Judgment	September 21, 1970

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AEROJET-GENERAL CORPORATION
9100 East Flair Drive, El Monte, California 91731
Telephone 288-7250

September 8th, 1969

Registered Mail —
Return Receipt Requested

TRUSTEES OF THE INTERNAL
IMPROVEMENT FUND OF THE
STATE OF FLORIDA,

and

THE STATE BOARD OF EDUCATION
OF FLORIDA,
Component State Agencies of the
State of Florida, or their successors
in interest

NOTICE OF EXERCISE OF OPTION TO PURCHASE

Notice is hereby given to the Trustees of the Internal Improvement Fund of the State of Florida, and The State Board of Education of Florida, that AEROJET-GENERAL CORPORATION hereby exercises its option to

purchase the following described lands situated in Dade County, Florida, to wit:

Sections	Acres	Ownership
1 thru 14 — T56S-R37E	8960	Trustees, I.I.F.
15 & 16 — T56S-R37E	1280	Board of Education
17 thru 20 — T56SR37E	2560	Trustees, I.I.F.
21 thru 23 — T56S-R37E	1920	Board of Education
24 thru 36 — T56S-R37E	8320	Trustees, I.I.F.
16 — T57S-R37E	640	Board of Education
W ½ of 5 — T59S-R38E	328	Trustees, I.I.F.
6 — T59S-R38E	665	Trustees, I.I.F.
16 — T59S-R38E	640	Board of Education
	25313	

under the terms of purchase contained in Paragraph 8(b) of that certain Lease with Option to Purchase, dated December 21, 1961, by and between the Trustees of the Internal Improvement Fund of the State of Florida and the State Board of Education of Florida, as Lessors, and Aerojet-General Corporation, an Ohio corporation, as Lessee, as amended by instrument dated January 14, 1963, amending paragraph 3 of said Lease.

Pursuant to the provisions of Paragraph 8(b) of said Lease, Aerojet-General Corporation has elected to pay 20% of the total purchase price of $1,265,650.00 (less any unearned rent from date of closing), in cash, simultaneously with the execution of a Contract to Purchase.

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Aerojet-General Corporation waives the right and privilege of having the lands surveyed to determine the actual acreage, as permitted by Paragraph 1 of said Lease, and elects to purchase the property as containing 25,313 acres.

Any further communication should be sent to Aerojet-General Corporation, Dade County, Post Office Box 368, Homestead, Florida, 33030; phone (305) 247-9200; attention, Mr. E. E. Nelson. Please advise us of the date upon which you would like to make settlement. Upon the date selected by you, we will deliver to you the cash due at closing in exchange for the contract to purchase required by Paragraph 8(b) of said Lease.

Very truly yours,

AEROJET-GENERAL CORPORATION

By: /s/ R. I. McKenzie

President

By: /s/ J. N. Ebright

Secretary

STATE OF FLORIDA
Secretary of State
(Seal of Florida)

I, Tom Adams, Secretary of State of the State of Florida, Do Hereby Certify That the following is a true and correct copy of the transcript of ITEM 23 on the Trustees of the Internal Improvement Trust Fund agenda, presented on the 21st day of October, A. D., 1969, as shown by the records of this office.

Given under my hand and the Great Seal of the State of Florida at Tallahassee, the Capital, this the 24th day of October, A.D. 1969.

/s/ Tom Adams

Secretary of State

(SEAL)

to come to these hearings up here in Tallahassee which I'm sure . . .

GOVERNOR KIRK: You don't always have to depend on being here to defend yourself. This wasn't generated by anybody other than the staff of these Cabinet. . .

MR. WILLIAMS: There may not be too much change involved, may not be any.

MR. HEMPHILL: I hope, Sir, you are right, that there isn't any.

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MR. WILLIAMS: But this gives them, everybody a chance to see if they are involved and the staff here, Well the staff here will keep in touch with you. You can do that, can't you?

MR. APTHORP: Yes, Sir, we stay in touch with Mr. Hemphill anyway.

GOVERNOR KIRK: Next item, please. We under-s_nd Mr. Hemphill's concern.

MR. APTHORP: Item 22 is withdrawal of sale of approximately 160 acres.

MR. ADAMS: Move approval.

MR. FAIRCLOTH: Second.

GOVERNOR KIRK: Approved.

MR. APTHORP: Item 23 is the Aerojet General lease option to purchase in Dade County. The motion that the Board adopted, made by Mr. Christian, the last time this was considered was that the item be deferred until the lessee could have a chance to be heard. Mr. Nelson who is the plant manager at Aerojet General site in Dade County is here and does wish to speak to the Board.

MR. FAIRCLOTH: Governor, to get the matter on the record, I move that the application be denied.

MR. WILLIAMS: Second it.

MR. FAIRCLOTH: And now we can have the discussion. Is that the proper form?

GOVERNOR KIRK: I would think that is proper. Of course, is that the recommendation of the, of the II Fund?

MR. APTHORP: Excuse me, Sir.

GOVERNOR KIRK: Is that your recommendation? The Attorney General's motion?

MR. APTHORP: No, Sir. We are in a situation here where our staff reviewed the contract. It was our opinion that it was a binding contract. The Board asked for the advice of the Attorney General and his opinion was different. He is the attorney for the Board and he is the attorney for our staff, and those two things are before the Board as I see it, and I, I am not an attorney and there is not an attorney on our staff, but those two questions are, and the motion as I stated at the outset was that it come back at a time that the lessee could appear.

GOVERNOR KIRK: Alright.

MR. FAIRCLOTH: Now I think I am just filling in until you get your staff, Jim.

MR. APTHORP: Yes, Sir.

MR. FAIRCLOTH: We voted here the other day, since I am a member of this Board, for the Attorney General not to be the Attorney for the Board.

MR. APTHORP: Yes, Sir.

GOVERNOR KIRK: I think that is.

MR. FAIRCLOTH: This is my opinion and we want to help out but I'm . . .

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MR. APTHORP: I understand that and November 1st, there will be a man on the staff that is an attorney and he will assume that responsibility.

MR. FAIRCLOTH: Alright, very good.

GOVERNOR KIRK: Go ahead, Sir. You understand that the Attorney General has made a motion as the Attorney General and seconded by Mr. Williams, I believe, that your lease be cancelled.

MR. NELSON: Right.

GOVERNOR KIRK: It has not been voted on and it is not the recommendation of the staff of the II Fund, but nonetheless it is now before us for discussion and therefore we would ask you to discuss it. At some point we are going to vote whether to void your lease or not, and it will happen today.

MR. NELSON: Thank you, Governor and Gentlemen. My name is Elmer Nelson and I am manager of the Aerojet General Space Booster Plant in South Florida. I represented our company in the negotiations with the State which resulted in the contract which is before you today. Excepting a short period of time spent in corporate headquarters, I have been manager of this plant during construction, activation and production. I was also responsible for the plant site search which resulted in our locating in Florida.

GOVERNOR KIRK: You were there when I helped fire the biggest rocket in the world's history. Isn't that right?

MR. NELSON: Yes, Sir. You played an instrumental . . .

GOVERNOR KIRK: The biggest, the most powerful rocket in the world's history was fired from there. Go ahead.

MR. NELSON: Early in 1961, our company determined need for a large acreage located where it could have access to Cape Kennedy by water and which would provide space for expected expansion and freedom from encroachment by urban development. The key to the acquisition of this land was the availability of the 25,313 State owned acres. Before we exercised our option to make significant additional purchases in the amount of 45,000 acres, we made certain by the execution of this contract that the State land would be available. The land in question is intermingled with Aerojet fee land. In the southern portion of our holdings, the land is at an elevation of 1½ feet and has from to 2 to 8 feet of mucky overburden. It requires a minimum of 3½ feet of fill to meet Dade County flood criteria. Surface of the State land in the northern portion of our property is hard rough coral rock. This area would require an average of two feet of fill to meet the flood criteria. All of the State land is under water except during unusually dry seasons. After Aerojet General Corporation had made certain by our contract with the State that the land would be available, we began construction of a plant in early 1962 which resulted in a capital investment on Aerojet's part for buildings and equipment of $21,200,000. About $2,000,000 of this was built on State owned land. In addition, our confidence in the integrity of our contract, let us to invest some $7,100,000 in land essentially surrounding the State land. This plant

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was completed and went on stream in the spring of 64 and operated with outstanding success until June of 67. Since that time, the plant has been maintained in a ready state by our company. In addition to the capital investment of some $28,500,000, we have paid $500,006 in lease fees to the State and $231,000 to Dade County for in lieu ad valorem taxes. We have meticulously complied with every term and condition of this contract. The State owned land in the southern portion of our property is entirely dedicated to the existing facility for processing large solid rockets. To deprive us of this land would make this facility inoperable unless extensive and costly modifications were made. While it's true that these facilities are now inactive, we have every confidence, even today, that big solid rockets have a future. While not a large volume dollar wise, there is much activity going on within NASA and our company pointing to utilization of these rockets.

GOVERNOR KIRK: Well it is not just your company, the State of Florida is pushing in behalf of the Governor, the solid fuel programs as well as the liquid fuel programs and; what is it, the 260 program?

MR. NELSON: Sir?

GOVERNOR KIRK: Number 260. Is that the program?

MR. NELSON: 260 inch program because, named that because of its diameter.

GOVERNOR KIRK: 260 inch program, we were able to accomplish getting some 11 bodies. Isn't that correct?

MR. NELSON: Sir?

GOVERNOR KIRK: Aren't there 11 bodies on plans for the 260 program?

MR. NELSON: You mean . . .

GOVERNOR KIRK: At any rate, I was talking to Dr. Payne, and we are not trying to get out of the rocket program, we are trying to get in it. We feel the development of Florida means results in the solid program as well as the liquid program and therefore we are diligently working with Dr. Payne and the Vice President's office now to get the solid program back on track which it is coming back on track, I have been assured.

MR. NELSON: I believe it will, yes.

GOVERNOR KIRK: I can be stronger about this than you can, isn't that right?

MR. NELSON: I appreciate that, Governor.

GOVERNOR KIRK: While Mr. Turlington watches me here, I also would like him to go watch what we do with the Vice President in this regard because we do try to spend money, in getting solid fuel programs and not violating contracts by the State of Florida.

MR. NELSON: The northern portion of this property which we set aside in 1961 as a reserve for future expansion, let me say that Aerojet is aggressively pursuing every kind of new space and rocket business that will spur added workloads.

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GOVERNOR KIRK: Based on this publicity office that I have in Washington, you see we have to decide which one of your Congressmen now or Senators you think would be more appropriate to push the solid fuel with. Which one would you suggest I pursue it with?

_____: . . .

GOVERNOR KIRK: I'd just as soon talk about it now. This is the . . .

MR. FAIRCLOTH: I move we hear the man who has come here to be heard.

GOVERNOR KIRK: Alright, go ahead. . . .

MR. NELSON: . . . We were talking about our future. As an instance, we are prime contractor for the Nerva-Nuclear rocket which recently got a big boost when the Presidents' task force recommended a go to, a go ahead to develop it into a flyable configuration. We are also focusing our very best brains on competing for the promising job of developing the rocket engines for the so-called space shuttle vehicle which the same task force advocated. So, Gentlemen, Aerojet is very alive today. We are tired of reading in local newspapers that we promised an 11,000 man employment and a $75,000,000 a year payroll in 1962 or 61 or any other time. As a matter of fact, we publicly deplored the excessive optimism with which the local news media treated our operations. As an instance of our efforts to constrain this wildly excessive optimism within reasonable bounds, the following are excerpts from local news media: In 1962 the Miami Herald printed the following: quote "The welcome that Aerojet General Cor-

poration is getting is so one-sided that the company's public relations and community relations experts fear it might backfire. Particularly a fear that people who rush to buy land along side or near the Aerojet property in South Dade County in anticipation of making a good profit later, will be disappointed and might through some preverse psychology blame the company for it. What worries Aerojet is that Miamians might expect too much of an economic lift from the rocket plant," end quote. The Miami Herald quoted the President of Aerojet General Corporation's parent company, as cautioning against exaggeration of the effects Aerojet might have on Dade County in saying that projections of 12,500 to 15,000 employees were way off in the future at least. Then again in May 27, 1964, the Miami Herald said, "Aerojet General Corporation has consistently declined to forecast future employment or expansion of the complex." Now ours is a difficult business; sudden program cancellations, big upward and downward employee moves, things of this nature. I need only point out what is going on in Brevard County at Cape Kennedy to realize that space business is not all growth and upward curves. In spite of the efforts being put forth in an effort to invalidate our contract, there can be no question in the mind of any reasonable man but that we have a legally enforceable document. I firmly believe that every man in this room is convinced that the intent of the parties to this contract entered into in good faith in 1961 was to make the land available to Aerojet. The insinuations that the acquisition of this property is a great windfall to Aerojet are just not true. We have no intention of selling any of the property, and we hope that all of it will ultimately find the use, find use in the business in which we are engaged. If Aerojet cannot place its faith in the integrity of the promises made to us by the

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State of Florida, confirmed in a document prepared by the Attorney General and signed by the Governor and his Cabinet then what can industry believe and who can industry trust? Gentlemen, I have spoken at length for a reason. This is a matter of vital importance to us, and it is of equally vital importance to the State of Florida. General Tire and its affiliates including Aerojet represent an annual volume of business of essentially 1 billion dollars. We need to be able to plot our future in Florida on a firm foundation. We therefore urge that in all fairness to Aerojet, you act decisively on this matter today. Thank you.

MR. CONNER: Governor, may I ask a question?

GOVERNOR KIRK: Go ahead. Who else will be heard in this regard? No one else will be heard? Mr. Conner.

MR. CONNER: Mr. Nelson, let me say that I, too, am concerned about the integrity of the State of Florida, and I think that if anyone should live up to a commitment, we should, but I also feel that all commitments should be lived up to, and I don't know the posture of your company today. You, we have talked about the future. Unfortunately, we are in the position of having to make a decision at a time when maybe your company does, has not has sufficient time to prove the worth of solid fuel or get the sufficient contracts. What is your employment situation at Aerojet in Dade County today?

MR. NELSON: We have fourteen people on the payroll today. They are engaged in maintaining the plant in a useful condition.

GOVERNOR KIRK: Do you think the solid fuel program, is a dead program?

MR. NELSON: No, Sir, I do not. In the last several years, there have been expenditures of, I estimate, two to three million dollars on technology work with our enginnering group in determining the feasibility of this program. Particularly of interest are two programs' one to put on paper in explicit detail, how we would process a much larger rocket than we have already processed, and the second one to determine precisely how we would transport such a rocket, weighing in excess of 4,000,000 pounds from our plant to Cape Kennedy. These were NASA funded programs.

MR. WILLIAMS: I have some notes here on the employment, you asked about.

GOVERNOR KIRK: Go ahead.

MR. WILLIAMS: In 1961 and 63, not listed; 64 was 250 employees; 65 was 150; that was true in 67, 68 then I showed in 1969, there is 18. You say it is 14.

MR. NELSON: Yes, Sir.

MR. WILLIAMS: That shows that they had a drop of 100 there from 250 down to 150 and then in 68, you had over 100, dropped over 100 employees. So undoubtedly you must not have much of an operation, just a custodial group there, isn't that true?

MR. NELSON: We have at the present time, just a custodial group.

GOVERNOR KIRK: It has how many dollars in the ground?

MR. CHRISTIAN: He said seven million.

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MR. NELSON: Expended in construction of Aerojet facilities, $21,200,00.

GOVERNOR KIRK: And obviously, you are not. . .

MR. CONNER: I think you . . . $2,000,000 on the State property.

MR. NELSON: Sir? Approximately $2,000,000 of this is built on the State property.

GOVERNOR KIRK: Is it your habit as a corporation with stockholders all over the world, to go about the business of throwing away investments like that you put in the ground or do you continue to try to sell your product?

MR. NELSON: Well when the, well the investments are based on such a document as we had from the State of Florida, we believed that we were justified in making a capital investment on the land.

GOVERNOR KIRK: Alright. But assume that the solid fuel program is awarded to you and you are competing for that at all times, obviously you have to open up a solid fuel operation at some point. Do you not?

MR. NELSON: Yes, Sir.

GOVERNOR KIRK: And you are actively soliciting solid fuel program, are you not?

MR. NELSON: With all our energy.

GOVERNOR KIRK: And the Governor is also involved in trying to get solid fuels as well as liquid fuels back into Florida in greater amounts. So we are obviously trying to sell both products at this time, and in earlier days, solid fuel program didn't receive the attention of Mr. Webb.

MR. CHRISTIAN: Mr. Chairman.

GOVERNOR KIRK: Go ahead.

MR. CHRISTIAN: I am concerned over the integrity of our Board, the previous Board which I think some members here served on. We are also concerned about a violation of a lease-purchase agreement which the Attorney General says is doubtless. My question to the Attorney General and to the Board, I personally feel that some way to keep you people from having to go to court should be looked at; the possibility of us asking the court to determine if this is a legal binding document on this Board, which we shall then honor. I am talking about a declaratory decree. Can this be. . .

GOVERNOR KIRK: I doubt seriously if Aerojet wants any more help out of the State of Florida at the moment.

MR. CHRISTIAN: This might be a way to find out if the, if it is a legal binding instrument. If it is, then we should honor it, Governor. If it is not a legal binding instrument, if it has been violated then I think we have a cause to be concerned. It would be my opinion that rather than put him to expense, if we turn it down, by guess he is going to court anyway and . . .

GOVERNOR KIRK: Make him feel happier in the Federal Courts probably so I wouldn't preclude him his rights as a citizen.

MR. CHRISTIAN: I am not precluding, I am trying to help him by making the determination ahead of time on the thing.

MR. CONNER: Let me say this as far as. . .

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GOVERNOR KIRK: You haven't even violated the lease yet.

MR. CONNER: As far as a windfall is concerned, I don't think any member of this Board is concerned, regardless of what the discussion may be around over the State, about whether we made a bad deal or not. If all my deals had been good, I'd be many times a millionaire today. I am happy that 50% of them have been favorable or better. I think the question is a simple one.

MR. WILLIAMS: A half a millionaire.

GOVERNOR KIRK: That means you are a half a millionaire.

MR. WILLIAMS: A half a millionaire.

MR. CONNER: I hope I am right more than I am wrong, and I think anyone tries to be. It is not a matter of whether you got a good deal or a bad deal out of the State. It is a matter of whether Aerojet has been able to perform, and I have no reason to believe that we have not had your complete good faith because I think any of us would have been willing to do anything we could to assist you and many did in attempting to get the contracts. Things did not work out in the manner that we would have liked for them to as far as your being able to utilize the property, and it is a legal question. It is not a question of whether you are going to profiteer or . . .

GOVERNOR KIRK: We're still working on it. You may not be working on it.

MR. CONNER: But whether you are going to profiteer on the land, this, the deal as far as I was concerned then and today, was a deal in the interest of the State of Florida, in which Aerojet was a part. Now it is a matter of whether you have been able to perform and meet your part of the contract. As far as I am concerned, the State of Florida's contract is on top of the table, and if we are not men enough to live up to our part of it then we ought not to be sitting on this Board. My mind has not changed during this eight years.

GOVERNOR KIRK: We have a motion by the Attorney General, seconded by Mr. Williams.

MR. FAIRCLOTH: Mr. Wright.

GOVERNOR KIRK: Mr. Wright.

MR. WRIGHT: Governor, could I say a word on behalf of Aerojet.

GOVERNOR KIRK: Come ahead, Sir. Mr. Wright, is it?

MR. WRIGHT: Yes, Sir. If it please the Board, my name is George Wright, I am an attorney with Mershon, Sawyer, Johnston, Dunwody, and Cole in Miami representing Aerojet General Corporation. I'd just like to say this that, Mr. Conner, I believe has pointed out that there seems to be a legal question or a legal issue which has been raised and indeed at the last meeting of the Cabinet, Mr. Benn on behalf of the Attorney General's office, submitted to the members of the Board, a memorandum which was for the first time furnished to the Board and which

we have had an opportunity to read and to digest, and we prepared a memorandum in support of the position of Aerojet General which issue by issue directs the position and the law that supports the position of Aerojet and the legality of this particular document. I trust and hope that each member of this Cabinet has had an opportunity to see and to review that memorandum. It was submitted by us to the members of the staff of the Boards at the staff meeting on last Friday. It is documented by legal authority, the law of the State of Florida. And while I have all due respect for my good friend Mr. Faircloth and Mr. Benn, we respectfully and vehemently disagree with the legal position that they took in the memorandum submitted to this Board at the last meeting, at which time they contended that the option was without consideration, the amendments void, the lease covenants had not been performed by Aerojet and that the lease, and therefore the option to purchase was subject to cancellation or termination at this time by the State. This lease has never been terminated or cancelled by the State. Aerojet has never been informed since this lease was executed that it has defaulted in the performance of any covenant contained in this lease. At no time has any member of the Board of Trustees or any member of the Board of Education, any member of the Attorney General's office or any member of the staffs of either of the Boards advised Aerojet that they had defaulted in the performance of any covenant contained in this lease. It has paid to this State its prescribed rental payments it has paid to Dade County, what has been referred to by Mr. Nelson, as in lieu ad valorem taxes, that is, the same amount as would have been paid had this land been subject to taxation, and indeed the last annual rental was paid last December. And the very first time that we have ever heard that Aerojet may have

possibly defaulted in the performance of any covenant in this lease was last Tuesday morning when Mr. Benn got up and said that he thought that the lease was subject to cancellation because of non-performance. And in order to arrive at a contention that the lease had not been performed, he had to argue that the amendment was void because of not published as required, which he contended is required by Section or Chapter 270 of the Florida Statutes. We submit the lease and the contract, the option to purchase was a valid binding contract. Aerojet has never been declared or asserted to be in default. The State has never sought to terminate the lease. The option has been exercised. It was exercised in good faith. It was exercised under a valid binding contract, and we ask and we respectfully request that this Board and the members of this Board, both as a Board of Trustees and as a Board of Education, honor its contractural obligations.

GOVERNOR KIRK: Thank you. And I think you'd point out that we are still working on the solid fuel program. Isn't that correct?

MR. NELSON: Yes, Sir.

GOVERNOR KIRK: And if there is ever a grant for that solid fuel program, all of these things will become operative again and immediately, and that Aerojet, if they are awarded this program at some point, will have to rebuild this structure once the State of Florida has renigged on its word.

MR. FAIRCLOTH: Governor, I'd like to ask, if these gentlemen have finished . . .

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GOVERNOR KIRK: Go ahead, go ahead.

MR. FAIRCLOTH: To ask Mr. Benn to reiterate the position taken here last week, very briefly, and, so that we can get it all in focus.

MR. BENN: Governor and members of the Trustees, I think it is important at this time to rebut item by item the memorandum submitted by Mr. Wright to the Trustees' staff last Friday. To put the issue in clear focus, to put the issue at clear focus, the integrity of the State of Florida is not at stake in this particular area.

GOVERNOR KIRK: I heard you last week, Mr. Benn . . .

MR. BENN: Well I just don't want my comments to be misunderstood.

GOVERNOR KIRK: . . . Don't be worried about my . . . I want to hear it again.

MR. FAIRCLOTH: No, I don't think we should, no I don't think we should burden the Governor.

GOVERNOR KIRK: Wasn't it clear?

MR. FAIRCLOTH: It is very clear to me, I am ready to vote. I just thought that if anybody wanted it reiterated, you are welcome to have it done, you are entitled to you. I am ready to vote. Mr. Benn, I'd suggest you just wait unless there is some member of the Board that wants to hear it.

GOVERNOR KIRK: Anybody want to hear it?

MR. FAIRCLOTH: You presented it very fully last week.

GOVERNOR KIRK: Yeah, I heard it all.

MR. BENN: The memorandum submitted by Mr. Wright in behalf of Aerojet.

MR. FAIRCLOTH: Well I don't think we need to rebut that here. It is not that kind of a proceeding.

MR. BENN: Okay. That is correct. It is not a judicial proceeding.

MR. ADAMS: Governor, I don't have a question but I would like to make a brief statement. It is very obvious to me that there will be legal questions to be answered in this matter. It is the reason why lawyers are trained, admitted to the Bar, and it is the reason why we have courts, and I certainly agree with you that the rights of no citizen or group of citizens should be denied for we do not sit as a judicial body, and I am certain that this thing will be carefully debated as far as the legal rights are concerned. The reason for my speaking is simply this. There were not, there was not just one member of the Board who sat when this lease was executed. There were two. Commissioner Conner sat on the Trustees and I sat as a member of the Board of Education and confirmed the then action, and I do not recall the figures. Mr. Nelson mentioned 11,000 anticipated employees that were played up in the press. This I know, we off times find things blown out of context but as a member of the Board of

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Education, when this matter was originally acted upon, I was led to believe and was very impressed with the fact that we were bringing into Florida at that time a vast new industry, and that this was an appropriate use for State lands. That not only the area on which the plant would be built but this buffer area around the plant, was absolutely essential to protect this kind of a development. I recognize, Governor, as you said that Mr. Webb apparently put the emphasis in the other direction. The control of this, Aerojet had nothing to do with, nor did the State of Florida. I can only say that as we sit here today, the new industry that I, as one voting member, was assured would be coming to Florida if we took this action, somehow has not developed and we are still trying. But now comes Aerojet, without an industry, seeking to purchase the land so it is obvious that while you are still trying, the State of Florida must have some assurance before we grant this sale. That the purposes for which we entered into this contract originally will be ultimately carried out, and these we don't have. So I sit here seeing you desiring to buy this land at a value which was partially set in partial consideration of the industry we would get but no industry. Yet you want fee title, and I must assume for some other purpose other than what was originally intended by the parties to the original contract of which I was one. I'll certainly keep my commitments, do the very best that I humanly can to do so, but I feel that it is an unfortunate circumstance over which Aerojet had no control and certainly the State doesn't, and I am unwilling, as I mentioned several weeks ago, to carry out a lopsided commitment to sell valuable lands for apparent purposes other than those originally intended at the time the agreement was entered into.

MR. NELSON: Mr. Adams, I can appreciate your position.

GOVERNOR KIRK: Would you take the mike again so that this can be recorded.

MR. NELSON: I think the value of the land as quoted in the news media, quoting knowledgeable people, is highly exaggerated. I point to one instance, that is the recent purchase by the Department of Interior of the Flagler tract which in the southern portion of our property adjoins us and which is contiguous with some of the State land. This is a parcel of ground of approximately a half a township. It is the same physical characteristics as our land. The portion of it in the western area, a little better than ours, it has been farmed. The appraisal was made by qualified appraisers. The consideration was cash. It was a completely arms length deal that typified a fair, the determination of a fair market value. The price was $105 an acre. Now the simple effect of inflation over eight years could account for that difference, and, Gentlemen, I don't think it is unusual in the State of Florida to find that land has increased in value in a period of eight years. I don't think it is illegal, immoral or unethical.

MR. CONNER: We agree, I am not concerned. . .

MR. NELSON: Now let me, let me answer the rest of Mr. Adams' statement. I said in my statement that we have no intention of selling this land, that we intend to hold it for the purpose for which we originally set it aside, to provide for an area to expand our operation. Now we intend to stand by that commitment.

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MR. ADAMS: Governor, could I ask Mr. Nelson a question?

GOVERNOR KIRK: Yes, go ahead, Mr. Adams.

MR. ADAMS: I certainly don't intend to, it is not my purpose to make a substitute motion, but I would think sitting here as the Board, Mr. Nelson, that the original intent was as I understood it, amd I must assume that it was on the part of both parties, that the State's interest would be much better protected with the possible extention of the present lease rather than a sale at this time. Now if we are still working on the solid jet program, if there is hope that it will come through, and this industry would, we all hope, would be coming to Florida, and the State of Florida in good faith attempted to assist this development, then I am perfectly willing to continue the commitment that this land be used for that purpose. With that apparently drifting away from us, though efforts are still continuing, I must take the position and intend to, that the original intent of the agreement as originally made, is not being carried out, that we are divesting ourselves of this land the use to which it was intended to be put, is not presently there. I feel, it has been my feeling all along that this commitment must be kept at the time any option is exercised, and if it will assist the ultimate development of solic fuel project, it can be done under a lease arrangment, extended possibly, and at such time as this becomes a going thing, then it appears to me appropriate for us to think favorably or for me to think favorably on selling the land if it is being put to that purpose, but this is not the circumstance at the moment.

MR. NELSON: Mr. Adams, the land is being put to the purpose that we said we would put it.

MR. ADAMS: What's that?

MR. NELSON: The land is being put to the purpose that we said we would put it to. We said we would build a solid rocket booster plant, and we dit that. We spent $28,500,000 in doing that. We said that we reserve the northern portion of this property for future expansion, and it is still reserved for that. Now I am certain that, down, that if, if the Board acts favorably and makes this land available to Aerojet and the legality of this lease is established that we will give careful, serious consideration to any use that the Federal, State or local government wants us to make of that property. We are not going to speculate with it, in spite of the rash of a little down and a little forever type of land sales development that is surrounding us.

MR. CONNER: Well I would support an extention of the agreement. I don't think the State of Florida is in a hurry to do anything. We want compliance with the contract, and I don't think there is any member around this table that wishes you any ill will in any respect. I think you would have our full cooperation. But I think until such time that we have the assurances the Secretary has pointed out, then the burden really is not on this Board. So my alternatives today as I see it would be to vote to deny the sale but I would be just as willing to give you a reasonable extention to give you time to perform. I think we are entitled to that. I think the people of this State are entitled to performance, and there is nothing that would please me more than to see your company perform.

GOVERNOR KIRK: Now there is a motion before us by the Attorney General and a second by Mr. Williams that this lease be voided, isn't it?

MR. FAIRCLOTH: That is right.

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GOVERNOR KIRK: Alright, then that is what it is.

MR. FAIRCLOTH: The motion made was that the lease be voided.

MR. WILLIAMS: May I ask a question? If there were, maybe I'd better address this to the Attorney General, if there was an extention of this lease would it not carry the same. . .

GOVERNOR KIRK: You going to have, you are going to have a unilateral extention? Who is going to play games with this crowd?

MR. WILLIAMS: I don't know who is going to plav games, I'm trying to . . .

GOVERNOR KIRK: Well I tell you, you have got a motion to void a lease, lets vote on that because obviously nobody is going to be able to trust anybody anymore.

MR. CHRISTIAN: We don't really need a motion to extend this lease because it is valid until 1971 anyway, Mr. Adams.

GOVERNOR KIRK: Now these people have asked. . .

MR. ADAMS: All we are really doing is voiding the option, the exercise of the option to purchase.

MR. WILLIAMS: What I want to know is from the Attorney General. . .

MR. FAIRCLOTH: I think if you are going to void anything, the option is incidental to the lease and the lease in my opinion on the facts, is in default for failure of performance, and that is just what Mr. Adams said and I

think it is sharp and clear. We can talk later, but I think we are entitled to void it and I so move.

GOVERNOR KIRK: It has been moved that it be voided, and it has been seconded by Mr. Williams. All in favor of voiding this lease, raise their right hand. The lease is voided with a negative vote on the part of Kirk and I guess Mr. Christian.

MR. CHRISTIAN: I did not vote. I wanted to make another motion but I wasn't given the opportunity, but...

MR. CONNER: Well I would presume that if he is opposed to this motion, we could get on with the other, and I would be willing, while they are here today...

GOVERNOR KIRK: And henceforth, do you think we can go ahead and solicit any of the solid fuel progra now based on this?

MR. CONNER: Well I just stated my position that I was willing to renew their lease and wait for their performance. That is...

GOVERNOR KIRK: Well the Federal Government doesn't go along with your legal approaches.

MR. CHRISTIAN: Mr. Chairman, I, I move, I make a motion if I may...

GOVERNOR KIRK: Neither does any corporate entity who knows how to finance any...

MR. CONNER: Well 14 employees is not indicative ...

GOVERNOR KIRK: $27,000,000 is a pretty nice little amount to put down there.

MR. CHRISTIAN: Mr. Chairman, could I make...

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GOVERNOR KIRK: . . . stockholder interest rates. You guys really, it has got to be one of the most amazing moves that I have ever seen.

MR. ADAMS: Well, Governor that is one . . .

MR. WILLIAMS: Well, we believe in being amazing.

MR. ADAMS: But on the other hand, you know private business takes fliers

GOVERNOR KIRK: That is alright. No, no, we have already voided it. Lets move on to the next item.

MR. ADAMS: I am sure that we, that is right, we have voted and you have explained one side of the picture, and private business does take a flier and a chance as obviously Aerojet did in this case, and they do it in many others, and solid fuel moved in the other direction.

GOVERNOR KIRK: No, no it hasn't stopped. I am working on it, Dr. Payne went to Europe, at least maybe a week or so ago, I talked to him before he left. I have an appointment the minute he returns back, and he may be back this week, on this very subject. Now I'll just call him and say forget it.

MR. FAIRCLOTH: Governor, if you have taken over that solid fuel thing, I am going to bet on the Russians.

MR. ADAMS: But the only thing, the only thing I can say, Governor, to answer your question is that this among other things could and is considered by some a very smooth move to recover a loss because the projection was wrong at the expense of the people of Florida. There was no performance. The position is clear and if we are going to safeguard the rights of the people of this State, the

action of this Board, in my opinion, was more than just appropriate.

MR. FAIRCLOTH: And what is at stake here is 25,000 acres of the State's lands that was about to go for $50 an acre.

GOVERNOR KIRK: I am used to these games, Interama and the others.

MR. CHRISTIAN: Mr. Chairman, may I make a motion.

GOVERNOR KIRK: Go ahead, Mr. Christian.

MR. CHRISTIAN: I'd like to move that the action taken by this Board be recorded and accepted as the minutes of the State Board of Education since we are a part of the lease.

MR. FAIRCLOTH: Second the motion.

MR. WILLIAMS: Second the motion.

MR. NELSON: Thank you, gentlemen.

GOVERNOR KIRK: Thank you for their time.

MR. CONNER: Now, Governor, if it would help your situation any, I'd be glad to put a moratorium on the sale, disposition of this land so that, that this Board would be free to meet any good faith effort on the part of this company.

GOVERNOR KIRK: You have just violated a contract. Just let them go to court . . .

MR. CONNER: Now who has violated . . .

GOVERNOR KIRK: Lets not cloud the, their legal abilities to go to court.

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MR. CONNER: It is not a matter of who has violated a contract that is under discussion.

GOVERNOR KIRK: Now they have got a chance to go to court. Next item.

MR. APTHORP: Item 22, excuse me, I am on the wrong item, item 24 is a Shell Lease Report which we submit for your approval.

MR. FAIRCLOTH: I move.

MR. ADAMS: Governor, could I ask the Director a question on this item.

[Number and Title Omitted]

(Filed May 26, 1970)

STIPULATION

It is stipulated by and between the undersigned, counsel for the parties hereto, that the attached documents are true and correct copies of the originals, that they are documents entered into by the defendant Trustees of the Internal Improvement Trust Fund and/or the defendant State Board of Education in the course and scope of their respective official functions, that the documents reflect official acts done and taken by the respective defendants, and that the documents are what they purport to be.

It is further stipulated and agreed that no defendants hereto waive any objection they may have to the materiality and relevancy of these documents being made a part of this record, but rather that all defendants specifically reserve the right to interpose objections to these documents

being made a part of the record on any and all grounds except those stipulated to herein.

TRUSTEES OF INTERNAL IMPROVEMENT FUND
STATE OF FLORIDA

CONTRACT AND LEASE

NO. 773

THIS CONTRACT AND LEASE made and entered into this the 29th, day of December, A.D. 1950, by and between the Trustees of the Internal Improvement Fund of the State of Florida, hereinafter called the Lessors, and The Anchorage, Incorporated, a Florida corporation, whose principal address is Islamorada, Florida, hereinafter called the Lessee.

WITNESSETH: That for and in consideration and upon terms hereinafter mentioned, the Lessors do hereby let and lease to the said Lessee the following described land situate, lying, and being in the County of Monroe, State of Florida, to-wit:

> Begin at a point at the Western edge of State Highway #4A right of way line opposite the North end of the Whale Harbor Bridge and run 450 feet parallel with said highway right of way in a Northeasterly direction, thence Northwesterly 200 feet, thence Southwesterly 450 feet, thence Southeasterly 200 feet to point of beginning, comprising 1.6 acres more or less in the SE¼ of SW¼ of Section 22, Township 63 South, Range 37 East, Monroe County, as per plat attached.

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TO HAVE AND TO HOLD the above described land unto the said Lessee for a period ending June 14, A.D. 2001.

The conditions and considerations on and for which this lease is executed are as follows:

1. The Lessee agrees to pay to the Lessors for the use of said leased premises:

a. The sum of $150 per annum for the period ending June 14, 1956.

b. The sum of $200 per annum for the period beginning June 15, 1956, and ending June 14, 1961.

c. The sum of $250 per annum for the period beginning June 15, 1961, and ending June 14, 1966.

d. The sum of $300 per annum from June 15, 1966, to June 14, 2001.

2. The Lessee will not do or suffer to be done in or upon the said leased premises any act which shall or may be a nuisance, annoyance, inconvenience or damage to the Lessors or to their successors in office nor to other persons or property.

3. The Lessee in accepting this lease does hereby agree that no claim of title to said land shall be made by reason of the occupancy or use thereof; that the title to said land is in the Lessors and the Lessee has no claim of any description thereto other than under this lease and upon the conditions herein stipulated.

4. The Lessee will not without the previous written consent of the Lessors or their successors in office, assign,

sub-lease, or part with the possession or control of the said premises or any part thereof.

5. The Lessee agrees that automatically upon the termination of this lease, all rights of Lessee to the use, occupancy, and possession of said land shall terminate and the Lessee will thereupon immediately vacate the said land.

6. The Lessors reserve the right to explore for and to mine and develop minerals and petroleum on or under the land herein described at any time, notwithstanding this lease or the rights granted hereby.

7. This lease extends no privileges to Lessee beyond the boundaries of the land herein leased.

8. Lessee agrees that he will not erect or maintain, or cause or permit to be erected or maintained, any type of buildings or other structures on said land during the life of this lease without first having secured the approval of the Director of Florida Board of Parks and Historic Memorials as to the design and construction of such buildings or structures.

9. Upon the neglect, failure, or refusal of the Lessee to keep, perform, or observe, in the manner and as herein provided, any of the terms, conditions, reservations, and restrictions required of said Lessee by this agreement, then and in that event this agreement and lease shall be null and void and all the rights and interests of said Lessee or any person or persons claiming under this lease shall cease and the leasehold estate herein conveyed shall immediately thereupon revert to the Lessors or successors in office and the Lessee and all persons claiming under him shall thereupon immediately vacate the said premises.

IN WITNESS WHEREOF, The Trustees of the Internal Improvement Fund of the State of Florida, have

hereunto subscribed their names and affixed their seals, and have caused the seal of the DEPARTMENT OF AGRICULTURE OF THE STATE OF FLORIDA, to be hereunto affixed, and the said Anchorage, the Lessee, has hereunto subscribed its name and affixed its seal, all in Duplicate, the day and year first above written.

/s/ Fuller Warren (SEAL)
GOVERNOR

/s/ C. M. Gay (SEAL)
COMPTROLLER

/s/ J. Edwin Larson (SEAL)
TREASURER

/s/ Richard W. Ervin (SEAL)
ATTORNEY GENERAL

(SEAL)
DEPARTMENT OF
AGRICULTURE

Sent to
Martin A. Dewey
Islamorada, Fla.
December 29th, 1950

/s/ Nathanial Long (SEAL)
COMMISSIONER OF
AGRICULTURE

As and constituting the Trustees of the Internal Improvement Fund of the State of Florida

/s/ Martin A. Dewey (President)

THE ANCHORAGE, INCORPORATED

WITNESSES:
/s/ Henry J. Dohrman
/s/ J. Clifton Russell

Tallahassee, Florida
September 19, 1961

The Trustees of the Internal Improvement Fund met on this date in the Board Room of the Governor's Office in the Capitol.

Present:	Ray E. Green	Comptroller
	Richard W. Ervin	Attorney General
	Doyle Conner	Commissioner of Agriculture
	Van H. Ferguson	Director-Secretary

Upon motion duly adopted the Trustees approved the minutes of the meeting held on September 12, 1961.

• • •

DADE COUNTY — E. E. Nelson as agent for the Aerojet-General Corporation applied for lease with option to purchase approximately 25,313 acres of land in Dade County owned by the State Board of Education and the Trustees, as follows:

Trustees Internal Improvement Fund, 20,833 acres, more or less

Sec. 1 through 14, T. 56 S., R. 37 E., 8960 acres

Sec. 17 through 20, T. 56 S., R. 37 E., 2560 acres

Sec. 24 through 36, T. 56 S., R. 37 E., 8320 acres

W½ of Sec. 5, T. 59 S., R. 38 E., 328 acres

Section 6, T. 59 S., R. 38 E., 665 acres

Board of Education land, 4480 acres, more or less

Sec. 15 and 16, T. 56 S., R. 37 E., 1280 acres

Sec. 21 through 23, T. 56 S., R. 37 E., 1920 acres

Sec. 16, T. 57 S., R. 37 E., 640 acres

Sec. 16, T. 59 S., R. 38 E., 640 acres

The lands were desired for research and construction of a manufacturing plant and associated facilities in connection with other adjacent properties which would be in the interest of national defense and the economy of the state, the applicant's proposal included offer to pay to the proper public agency the equivalent of taxes on land and improvements as if they owned the land, and the action of the State Board of Education in meeting earlier on this date was to approve advertisement of its lands for bids conditioned upon concurrence of the Trustees.

Concurrence in authorization for advertisement for competitive public sale was recommended on offers of (a) annual rental per acre for a ten-year lease and (b) purchase price per acre for option all under a ten-year lease-purchase agreement with requirements:

(1) that no part of the land be used for land speculation purposes during the full 10-year period without formal consent of both Boards,

(2) that lessee-optionee, within a reasonable time, commence construction of manufacturing plant and associated facilities on said lands or lands contiguous thereto and owned, leased or controlled by lessee-optionee,

(3) that said lands be used for and in connection with said plant and facilities,

(4) that neither the lease-option nor any contract for purchase arising out of exercise of purchase option shall be subject to assignment without formal approval of both Boards,

(5) that all mailed bids be accompanied by certified or cashier's checks in sum equal to one year's rental as bid and that the deposit by successful bidder be applied as prepaid rental,

(6) that the estimated acreage totals be subject to more accurate totals in the event lessee-optionee shall, at its expense, procure field survey by a Registered Land Surveyor ap-

proved by the two Boards and in such event subsequent rental or purchase payments will be adjusted in accordance with the corrected acreages,

(7) all subject to right of the Boards to reject any and all bids.

Attorney General Ervin recommended that lease be worked out containing a firm covenant that if successful bidder did not develop the land as proposed, it would revert to the state.

Motion was made by the Comptroller and adopted without objection that the application be approved for advertisement for competitive public sale on the basis of requirements listed above, with addition of cancellation clause at the discretion of the two state owner-boards in the event award was made and development and use as proposed was not commenced within twelve months after date of lease-option.

[Number and Title Omitted)

(Filed January 20, 1970)

AFFIDAVIT OF JAMES N. EBRIGHT

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

BEFORE ME, personally appeared JAMES N. EBRIGHT, who, after being by me first duly sworn, deposes and says:

1) I am of the age of forty-two years and am a resident of Pasadena, Los Angles County, California. I am presently and have been continually since February 2, 1966, secretary and general counsel of the plaintiff, Aerojet-General Corporation. I have personal knowledge of the matters herein contained.

2) Aerojet-General Corporation is now and has been continually since March 31, 1953, a corporation duly incorporated, organized and existing under the laws of the State of Ohio, and its principal place of business is now and has been continually since March 31, 1953, solely in the State of Ohio. Aerojet-General Corporation did not have, at the time of the filing of the Complaint in the above-entitled cause, nor has it ever had, its principal place of business in the State of Florida.

/s/ James N. Ebright

JAMES N. EBRIGHT

SWORN TO and SUBSCRIBED before me this 15th day of December, 1969.

/s/ Virginia W. Knipps

Notary Public
State of California

[Number and Title Omitted]

(Filed June 15, 1970)

DEFENDANTS' REPLY MEMORANDUM

Defendants, the Board of Education and the Board of Trustees of the Internal Improvement Trust Fund, herewith reply to the questions posed by the Court and to the plaintiff's memorandum of April 6, 1970.

Avoiding that *cacoethes scribendi* so baneful to the courts, defendants will state a contextual recapitulation and then address straight away the remaining issues raised by the Court.

1. *Recapitulation*

This cause arises from a 1961 "Lease With Option to Purchase" entered into by these defendants and this plaintiff.

Consideration, as inducement, price or impelling influence moving execution of the said contract[1] was recited therein, the most salient elements of which were:

1) Aerojet's promise to establish a manufacturing plant and associated facilities to be used in production activities to strengthen the national defense and to enhance the best interests of the people of Florida;[2]
2) Payment of ten dollars ($10.00);

---

[1]Fla. Jur., Contracts, §36, *Tampa Northern R. Co. v. City of Tampa*, (Fla.) 140 So. 311, 312.

[2]Plaintiff covenanted in Paragraph 3 of the contract "to utilize the aforementioned described land in conjunction with the operation of such manufacturing plant and associated facilities." Too, the legal advertisement run in 1961 evinced the pervasive inducement to contract by these words: "A purpose of this offering is to motivate establishment of facilities and production in the interest of the economy of Florida and the National defense."

3) Payment of prescribed rental;

4) Forbearance from use of the realty for speculative purposes for ten years from December of 1961.

The option to purchase, as a continuing offer by defendants to sell in the manner set out in Paragraph 8 of the contract, was, according to plaintiff, supported by the general consideration noted above,[1] and to be executory had to be accepted by plaintiff according to the terms of the offer as induced by the said consideration.[2]

Consideration failed[3] and the outstanding offer was not accepted on its terms,[4] *i.e.*, the option was not exercised, it is contended by these defendants. No manufacturing plant or associated facilities are used in production activities, nor are such used in production activities to strengthen the national defense, nor even are such used to enhance the best interests of the people of Florida.

Failure of consideration, and the plaintiff's impermissible election to convert the subject realty to its ownership in the face of the said failure of consideration, were duly and formally noted by defendants — which formal notice precipitated plaintiff's complaint for specific performance.

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[1] 7 Fla. Jur., Contracts, §77; *Stewart v. Preston*, (Fla.) 1 Fla. 10, 44 Am. Dec. 621; *Hoffman v. Robinson*, (Fla.App.) 213 So.2d 267; 12 Am. Jur., Contracts §§241, et seq.; 17 C.J.S., Contracts, §§297, 47c.

[2] *Acheson v. Smith's, Inc.*, (Fla.) 118 So. 576, 577; *C. W. Kistler Co. v. Hotel Martinique, Inc.*, (Fla.) 44 So.2d 288, 291; 3 Words & Phrases, 2d series, at 754; 17 C.J.S., Contracts, §§176.

[3] 7 Fla. Jur., Contracts, §39; *Jones v. McCallum*, (Fla.) 21 Fla. 392; *Binz v. Halvetia Fla. Enterprises, Inc.*, (Fla.App.) 105 So.2d 201; 12 Am. Jur., Contracts, §360.

[4] 17 C.J.S., Contracts, §§17b., 100(4), (1); 7 Fla.Jur., Contracts, §20; *C. W. Kistler Co. v. Hotel Martinique, Inc.*, (Fla.) 44 So.2d 288.

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Defendants, after all, were not induced or impelled to contract for or in anticipation of plaintiff's employment of a 14-man janitorial crew whose contribution to the national defense is even less apparent than their contribution to the best interests of the people of Florida. Moreover, if, as plaintiff insists, the consideration originally obtaining persisted throughout the lifetime of the contract, it unblinkably failed (and plaintiff failed to accept the continuing offer of sale by acceptance in terms of the specified establishment and use of a plant and associated facilities) no later than the penultimate moment, the eleventh hour, when plaintiff sought to divest defendants of ownership by transmuting the subject property from leasehold to equitable fee ownership.[7]

2. *Lease With Option to Purchase*

As admirably reasoned and documented by plaintiff (pp. 1-8, Plaintiff's Memorandum of April 6, 1970) the Board of Trustees of the Internal Improvement Trust Fund is and has been statutorily empowered to sell and to lease such realty as the subject property. The Board of Education is and has been similarly empowered (pp. 8-10, *ibid*). The conjunction of these powers is neither prohibited by law nor inconsistent with the statutory and judicial authorities permissive of such discrete undertakings, in the defendants' view.

3. *Notice Requirements*

Sections 270.07 and 270.08, Florida Statutes, relate to, and require, notice of sale of public lands. There is

[7] *Howard Cole & Co., Inc. v. Williams*, (Fla.) 27 So.2d 352; Atkins, Florida Real Estate, §12.01, supportive of the proposition that the conditions of the option — the obligations of the optionee — must be met within the time of the option's exercise.

agreement that these requisites were *formally* satisfied.

Questions have been posed, however, concerning the adequacy of the original notice, and concerning the need *vel non* to re-notice the 1963 amendment to the "Lease With Option to Purchase."

A. *Adequacy of Notice*

Analogies may be formulated, it is suggested, between the notice required by Chapter 270, Florida Statutes, and the notice to be effected by (1) titles of legislative acts, and (2) notices of application for special or local legislation. In both cases, it would appear, prevention of fraud or deceit, rather than provision of detailed explication, is the desideratum. In the instant cause, the notices published (See Exhibit I, Plaintiff's Supplemental Request for Admissions of Fact, Dec. 4, 1969) were comprehensive and rather detailed.

(1) Legislative Acts — Titles

Article III, §16 of the Florida Constitution of 1885 (now Article III, §6, Fla. Const.) requires the titles of laws briefly to express the subject thereof. The purpose of this requirement is to put the public on notice,[8] to avoid misleading or deceiving the public,[9] or, otherwise put, to disclose the general subject to the ordinary enquiring mind.[10] But this required notice need not be detailed; every jot and tiddle of the subject act needn't be abstracted in the title.[11]

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[8]30 Fla.Jur., Statutes, §16, p. 136.
[9]*Ibid*, §§52, 53.
[10]*Butler v. Perry*, (Fla.) 66 So. 150, aff'd 240 U.S. 328.
[11]*Kirkland v. Phillips*, (Fla.) 106 So.2d 909.

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(2) Special or Local Laws — Notice

Article III, §21 of the Florida Constitution of 1885 (now treated partially by Article III, §10, Fla. Const.) required publication of notice of application to the Legislature for enactment of local or special legislation. Notice, in this instance, entails a statement of substance.

In *State v. Alachua County*, (Fla.) 16 So.2d 288, the county, wishing to erect and furnish a nurses' home for trained and cadet student nurses, published a notice declarative of application for "AN ACT authorizing and conferring powers upon Alachua County, Florida, and its officers to finance, construct, maintain and own public works and buildings." The notice was sustained. There is the barest suggestion in this decision, at page 289, (headnote 3), as in others to follow, that governmental determination of the notice's adequacy will normally operate to validate the notice.

In *State ex rel. Watson v. City of Miami*, (Fla.), 15 So.2d 481, a notice of application for legislation annexing determinate lands was sustained in the face of consequential legislation which deviated from the geographical notice. The formal rationale, as stated by the Court, is the Legislature's power to legislate — unhampered by such notice provisions as were there operative. The same general principle, with the additional caveat that details deviant from the notice are within the legislative prerogative, was enunciated in *State ex rel. Landis v. Reardon*, (Fla.), 154 So. 868.

In *State v. City of Miami*, (Fla.), 200 So. 535, the city, wishing legislation enabling it to purchase a water works system and to effectuate the financing thereof by the sale of bonds, omitted from the published notice: that

application would be made to the Florida Legislature (rather than to the City Commission, for example), and the year in which said application would be made. The notice was sustained.

In fine, notice — in the case of the analogues here employed — requires a general, undetailed but not misleading statement.

In the instant cause, as earlier noted, notice was, it appears, elaborate and substantial.[12]

[12]See also, *Sylvester v. Tindall*, (Fla.) 18 So.2d 892. In this case it was held that acceptance of a proposed constitutional amendment cured notice defects, if any.

B. *Notice — 1963 Amendment*

Paragraph 3 of the 1961 contract by covenant required Aerojet to commence (within 12 months of execution of the instrument) "construction and installation of a manufacturing plant and associated facilities . . . and in so doing to utilize the aforementioned described land in conjunction with the operation of such manufacturing plant and associated facilities."

Paragraph 3, above cited, was far more restrictive than the notice to bidders, which recited:

> "In the event an award is made and development and use for said purpose shall not be commenced within twelve months after date of lease-option, the said lease-option will then *become subject to cancellation at the discretion* of the two State owner-boards."
> [Emphasis supplied]

So far forth, then, the 1961 contract covenant embodied in Paragraph 3 was more restrictive than was the

prior notice to all bidders. This, the defendants believe, did not invalidate or make infirm the notice, the contract, or Paragraph 3.[13]

The 1963 "Amendment to Paragraph Three of Lease With Option to Purchase," expressly predicated upon an agreed desire "to eliminate any question as to whether Paragraph Three has been complied with," formally extended the commencement deadline to December of 1964.

First, to be candid, the amendment did not admit of a breach of covenant by Aerojet.

Second, the amendment was executed January 14, 1963, *after* expiration of the twelve-month commencement deadline, raising, defendants concede, the possibility of estoppel to deny its validity or efficacy.[14]

Third, the notice to bidders did *not* limit the potential lessee-optionee to a twelve-month period of commencement, but vested the two State owner-boards with the *discretion* to cancel the agreement absent such commencement. Therefore, the contract and amendment being more restrictive than the notice, no discernable deception was practiced upon the bidders.

Fourth, the notice required by Chapter 270, Florida Statutes, would, on its face, have been inapplicable to the subject of the 1963 amendment (which was itself not a sale of public lands); thus, there was no apparent requirement again to notice potential bidders of a sale.

[13]See, 30 Fla.Jur., Statutes, §§16, 52, 53; *State ex rel. Watson v. City of Miami*, (Fla.) 15 So.2d 181. A product more limited than the notice thereof is, by this token, not invalidated; prior notice, under the circumstances, was more ample than necessary. By analogy, albeit imperfect, the same principle should be operative with respect to notice of the letting of this lease-option contract.

[14]See, 7 Fla.Jur., Contracts, §11, p. 100.

4. *Conclusion*

Although candor has compelled these defendants to concede (1) their authority to enter lease-option contracts, (2) the adequacy of the notice given to bidders, and (3) the absence of a requirement to re-notice the 1963 amendment, the defendants expressly reserve the right to otherwise contest the validity of the said 1963 amendment(as said right may be shown by the pleadings.)

Fundamentally, the defendants subscribe to the notion that "the [judicial] decision" ought to be "made to fit as far as possible the expectations" of society,[15] for truly "expectation is the mother of justice."[16]

The expectation or anticipation which moved and impelled the execution of the subject "Lease With Option to Purchase," and which thereby foundationed it as consideration, has failed — even as Aerojet-General has addressed the national defense and the best interests of the people of Florida by the employment of 14 janitors rather than by the establishment of an operational plant and associated facilities strengthening of the national defense and public interest. Clearly, Aerojet has not performed the acts required by Paragraph 3 of the contract.

It is principally on this basis that defendants have taken their stand in this cause.

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[15]Cohen, REASON AND LAW (The Free Press 1950) 79.
[16]deJouvenel, SOVEREIGNTY (Cambridge University Press 1957).

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RECORD VOLUME III

In the
United States Court of Appeals
for the Fifth Circuit

No. 31,018

CLAUDE R. KIRK, JR., et al.,
Defendants-Appellants,

vs.

AEROJET-GENERAL CORPORATION,
Plaintiff-Appellee.

Appeal from the United States District Court for the Northern District of Florida, Tallahassee Division

APPENDIX TO APPELLEE'S SUPPLEMENTAL BRIEF

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ACKNOWLEDGEMENTS AND SIGNATURES ON THE FOLLOWING DOCUMENTS ARE OMITTED FROM THIS APPENDIX.

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Appeal from the United States District Court for the Northern District of Florida, Tallahassee Division

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APPENDIX TO APPELLEE'S SUPPLEMENTAL BRIEF

[Number and Title Omitted]

(Filed May 26, 1970)

STIPULATION

It is stipulated by and between the undersigned, counsel for the parties hereto, that the attached documents are true and correct copies of the originals, that they are documents entered into by the defendant Trustees of the Internal Improvement Trust Fund and/or the defendant State Board of Education in the course and scope of their respective official functions, that the documents reflect official acts done and taken by the respective defendants, and that the documents are what they purport to be.

It is further stipulated and agreed that no defendants hereto waive any objection they may have to the materiality and relevancy of these documents being made a part of this record, but rather that all defendants specifically reserve the right to interpose objections to these documents being made a part of the record on any and all grounds except those stipulated to herein.

ACKNOWLEDGEMENTS AND SIGNATURES ON THE FOLLOWING DOCUMENTS ARE OMITTED FROM THIS APPENDIX.

TRUSTEES INTERNAL IMPROVEMENT FUND, STATE OF FLORIDA

SAND LEASE

No. 296

THIS CONTRACT, LEASE AND PERMIT, made and entered into on this 28th day of December, A. D. 1942, between the Trustees of the Internal Improvement Fund of

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the State of Florida, hereinafter, called the Trustees, of the first part, and Florida Gravel Company, a corporation organized and existing under the laws of the State of Florida, hereinafater, called the Lessee, party of the second part.

WITNESSETH: That the Trustees under and by virtue of Chapter 253.45, Florida Statutes, 1941, and for and in consideration of the sum of Five Cents (5¢) per cubic year, same to be paid as, hereinafter, set forth, do hereby grant, bargain and sell to the Lessee and to its successors and assigns for a period of FIVE (5) years from January 1, 1943, the right, leave, license and permit to dredge, mine and take sand and gravel, or either, for commercial purposes from that certain territory and area, to-wit:

> All that portion of the Apalachicola and Chattahoochee Rivers in the State of Florida, from Apalachicola, Franklin County, Florida, to the line between the States of Alabama and Florida.

Together with the right, leave, license and permit to enter into and upon the said rivers and territory with the necessary machinery and equipment to mine, dredge and take from the said river bottoms and waters, sand and gravel, or both, and conveying to the Lessee the title to all sand and gravel so taken and paid for.

The right, leave, license and permit hereby granted is upon the following terms and conditions;

FIRST: That the Lessee in its operations upon said rivers and in taking sand and gravel, therefrom, shall not in any manner interfere with the navigation of the waters of said rivers, or the public's legitimate use of said waters.

SECOND: That the said Lessee shall not dredge or take sand or gravel from any locality where the taking of same would injure or damage any private or public structure or property.

THIRD: That at the end of each calendar month during the life and term of this lease and permit, the Lessee shall faithfully account to and pay over to the Trustees for all sand and gravel, or either, taken during the preceding month and pay over to the Trustees the sum of Five Cents (5) per cubic yard, for sand or gravel so taken. In no case shall the time of the accounting and making payment for sand and gravel so taken in any one month be later than the 10th, day of the succeeding month.

FOURTH: That in accounting and paying for sand and gravel so taken, the Trustees agree to take and accept shipping weights where such sand and gravel is weighed for shipping by rail, or otherwise, or standard weights where such sand and gravel is used or sold without shipping.

FIFTH: That the Lessee shall pay to the Trustees the sum of $25.00 for each and every month during the life of this contract, whether that amount of sand and gravel is taken or not.

SIXTH: That the Lessee shall execute and deliver to the Trustees as a part of this contract, a good and sufficient bond in the sum of $500.00 conditioned that the said Lessee will well and faithfully account to and pay to the Trustees for all sand and gravle taken under this contract, and will well and faithfully abide by and live up to all the terms and conditions of this contract, lease and

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permit . . . Such bond can be given by the Lessee depositing with the Trustees securities, satisfactory with the Trustees, in the sum of $500.00 or by giving bond with some reputable Surety Company, authorized to do business in Florida, as Surety.

SEVENTH: That should said Lessee, its successors or assigns, at any time fail to live up to and carry out any of the terms and conditions of this contract, lease and permit, that then and in that event the Trustees shall have the right to cancel the same and stop the further taking of sand and gravel hereunder.

EIGHTH: That the Trustees or their duly authorized agents shall have the right at any and all times to inspect the books and works of the Lessee in any matter pertaining to this contract, lease and permit.

NINTH: That should the Lessee assign its rights hereunder, such assignment shall not be binding on the Trustees until a copy of such assignment shall have been filed and deposited with the Trustees, and the Assignee give bond as required of the Lessee herein.

TENTH: This lease and permit is not exclusive but, the Trustees reserve the right, at any time, to grant similar or other permits to other parties covering the same territory herein described.

WITNESS FURTHER, That the Lessee for itself and its successors and assigns does hereby accept this contract, lease and permit upon the terms and conditions herein specified and set forth, and does hereby promise, obligate and agree to live up to, observe and abide by all the terms and conditions hereof, and to make full accountings and payments promptly as provided for in this instrument.

COUNTY OF VOLUSIA RIGHT OF WAY EASEMENT
STATE OF FLORIDA
through the
TRUSTEES OF THE
INTERNAL IMPROVEMENT FUND
OF THE STATE OF FLORIDA, GRANTOR

to

No. 320.
American Telephone and Telegraph Company,
a New York Corporation, GRANTEE

WITNESSETH:

WHEREAS, American Telephone and Telegraph Company, a public utility corporation of the State of New York, at the instance and request of the United States Navy and in connection with the construction of an air base at New Smyrna Beach, Florida, proposes to relocate a portion of its St. Augustine-West Palm Beach Line across certain submerged lands owned by the State of Florida, and to that end has applied to the said Trustees for an easement and right of way upon, across, over and under portions of said lands for telephone and telegraph purposes; and

WHEREAS, inasmuch as the proposed relocation will be performed at the instance of the Navy Department and in connection with a national defense project, the said Trustees are willing to grant the said right of way and easement; Therefore,

KNOW ALL MEN BY THESE PRESENTS: That the State of Florida, through the Trustees of the Internal Improvement Fund of the State of Florida, in consideration of the premises and for and in consideration of the sum of Forty-six and 05/100 Dollars ($46.05), to them in hand paid, the receipt of which is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell and convey unto American Telephone and Telegraph Company, its associated and allied companies, its and their respective successors, assigns, lessees and agents, an easement for right of way to construct, operate, maintain, replace and remove a communication system consisting of such poles, fixtures, guys, anchors, wires, cables, testing-terminals, conduits, manholes, markers and other appurtenances, as the Grantees may from time to time require, upon, across, over and under the following described lands which the State of Florida owns or in which it has any interest, situate, lying and being in the County of Volusia and State of Florida, to-wit:

> The submerged part of the South Half of the Northeast Quarter, Section 2, Township 17 South, Range 33 East, known as Turnbull Bay.

together with the following rights: Of ingress and egress over and across the above described lands to and from said system for the purpose of exercising the rights herein granted; to install gates in any fences crossing said system; to clear and keep cleared all trees, undergrowth and other obstructions within twenty-five feet of said system and any trees that may reach said system in falling; and to permit the attachment of and to carry in said system the wires, cables, circuits and appurtenances of any other company.

EASEMENT

No. 345

THIS DEED made this 23rd day of November, 1943, between SPESSARD L. HOLLAND, as Governor, NATHAN MAYO, as Commissioner of Agriculture, J. M. LEE, as Comptroller, J. EDWIN LARSON, as Treasurer, J. TOM WATSON, as Attorney General, as and constituting the Trustees of the Internal Improvement Fund of the State of Florida, parties of the first part, and UNITED STATES SUGAR CORPORATION, a corporation organized and existing under the laws of the State of Delaware, duly authorized to transact business in the State of Florida, party of the second part, WITNESSETH:

That the parties of the first part, for and in consideration of the sum of $1.00 to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, and other good and valuable considerations, have granted, bargained and sold, and by those presents do grant, bargain, sell and convey unto the said party of the second part, its successors and assigns forever, the full, complete and perpetual right, power and privilege to enter upon and use the following described lands lying and being situate in the Counties of Hendry and Palm Beach, State of Florida, to-wit:

A strip of land 100 feet wide on each side of a line described as follows:

From the southeast corner of Section 14, Township 43 South, Range 34 East, Hendry County, Florida, run N 0°33'55" W along the east line of

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said Section a distance of 4,101.05 feet to an intersection with the southerly right of way line of the United States Levee as recorded on page 80 of Plat Book 2 of the public records of Hendry County, Florida; thence run N 59°00'57" W along said right of way line a distance of 1,087.09 feet to a point; thence run N 30°59'03" E at right angles to said right of way line a distance of 510.00 feet to a point; thence run N 43°09'03" E a distance of 705.85 feet to an intersection with the northerly right of way line (1,200.00 feet northeasterly from and parallel to the aforementioned southerly right of way line) of the United States Levee which point of Intersection is the point of beginning.

From the above described point of beginning run N 43°09'03" E a distance of 21,116.54 feet to a point.

All bearings used in the foregoing description are from the meridian referred to on the above mentioned recorded plat of the United States Levee right of way;

in the construction, laying, operation and maintenance of pipe lines, power lines, telephone lines, pumping plants, intakes and other appurtenant works and structures, for the purpose of taking and removing water from Lake Okeechobee.

Reserving, however, to the parties of the first part, their successors and assigns, all such right and privileges in said tract as may be used and enjoyed without interfering with or abridging the rights and easement hereby granted to the party of the second part.

TO HAVE AND TO HOLD the said rights and easement unto the party of the second part, United States Sugar Corporation, its successors and assigns, forever, and the said parties of the first part, for themselves, their successors and assigns, do hereby covenant with the party of the second part that they have good right and authority to grant and convey the same in manner and form, as aforesaid, and that they will warrant and defend the title of the same to the said party of the second part, and its assigns, against the claims and demands of all persons.

PERMIT

FOR OCCUPYING A TRACT OF LAND WITH WATER PIPE LINES

DATE; May 4th, 1945.

No. 410

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND
TO
UNITED STATES SUGAR CORPORATION

WHEREAS the United States Sugar Corporation has made application to the Trustees of the Internal Improvement Fund for permission to occupy a certain strip of land belonging to said Trustees for the purpose of laying a water pipe line across the said premises; now therefore,

THIS IS TO CERTIFY that the Trustees of the Internal Improvement Fund, for and in consideration of the sum of One ($1.00) Dollar do hereby authorize the United

States Sugar Corporation to occupy a strip of land for laying and maintaining a 3" water pipe line through and under the following described land in Palm Beach County:

Begin at the point in the southeast corner of Belle Glade Prison Farm tract in the NE¼ of Section 19, Township 43 South, Range 37 East, which said point is 45 feet West of the center line of State Road No. 143;

Thence North along the easterly edge of Prison Farm Tract, parallel with center line of said road and 45 feet west thereof, to right of way of Florida East Coast Railway, and

Begin in the North boundary of Section 20 of said Township and Range at a point 55 feet East of the Northwest corner of said Section;

Thence South, parallel with West boundary of said Section, to right of way of Florida East Coast Railway.

All subject to the following conditions:

1. Permission to permittee, its successors and assigns, to occupy the land above described, for the purposes herein and subject to the conditions hereof, shall run so long as the said permittee, its successors or assigns, shall occupy said land with said line.

2. That in accepting permission from the Trustees to occupy said land it shall be the distinct understanding and agreement of permittee that the existence of said pipe line shall in no way interfere with the uses which the Trustees, or the State of Florida, may make of the

land occupied by said pipe line, or lands contiguous thereto.

3. That in the event the Trustees make use of said land for any other purpose, permittee agrees that said pipe line shall be moved by it, or such other means taken by or at the expense of permittee, as may be necessary, to prevent said line from interfering with the Trustees' use of said land.

4. That this permit imposes no obligation or liability of any character whatsoever upon said Trustees in the laying and maintenance of said pipe line or for damage which may result thereto or therefrom, and permittee will hold the said Trustees harmless in all matters arising thereunder.

5. That this permit vests no property rights in permittee but is limited to permission to the United States Sugar Corporation to occupy the above described land in the laying and maintenance of the water pipe line aforesaid, in accordance with the conditions herein named.

6. That the pipe line occupying the land above described shall be laid at least two (2) feet below the ground surface and in such a manner as not to interfere with the fence or trees existing at the location of said pipe line.

7. The Trustees reserve the right to cancel this permit for violations of its conditions by permittee, such cancellation to become effective six (6) months after notice to the permittee.

PERMIT

December 1, 1950

No. 766

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA TO ISLE OF DREAMS BROADCASTING CORPORATION

WHEREAS, on November 20, 1950, Isle of Dreams Broadcasting Corporation, whose address is Miami 30, Florida, made application to the Trustees of the Internal Improvement Fund for permission to construct and maintain an anchor and guy wire or wires in connection with its broadcasting tower located in Bay Biscayne, Dade County, Florida, now, therefore,

THIS PERMIT issued by the Trustees of the Internal Improvement Fund authorizes the Isle of Dreams Broadcasting Corporation, its agents, engineers and contractors to enter upon and occupy the premises hereafter described and to construct and maintain thereon an anchor and guy wire or wires connecting with the broadcasting radio tower of said corporation on an area as shown and described on a drawing hereto attached and made a part hereof, subject to the following conditions:

1. That permittee will save the Trustees of the Internal Improvement Fund harmless against anything arising out of this permit.

2. That this permit shall run so long as the described premises shall be used for the purpose described, except as set forth in condition 3 hereof.

3. Permittee may assign the rights granted hereunder to its successor or successors upon notice in writing to the Trustees of the Internal Improvement Fund given within thirty (30) days after such assignment. Otherwise, this permit shall by the expiration of said period become terminated.

4. Subject to the issuance of a permit by the Department of the Army in reference to the interest of the United States in navigation, this permit shall take effect as of the date hereof.

THIS PERMIT DULY ISSUED BY THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA shall take effect upon the signing of this instrument and another of like tenor and date, by permitee herein, whereby said permittee is bound to this permit and to each and every condition thereof. (December 8, 1950)

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA

LEASE NO. 1059

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND of the State of Florida, herein-

after called the Lessors, under authority of law, and for and in consideration of the rents hereinafter reserved and the agreements and covenants hereinafter mentioned, to be paid and kept by the Lessee hereinafter mentioned, hereby demise, lease and let, and do by these presents demise, lease and let unto the MARINE STUDIOS, INC., a corporation, whose post office address is Marineland, Florida, hereinafter called the Lessee, the following described lands in Flagler County, Florida, to wit:

> All that area between the high and low water mark of the Atlantic Ocean adjacent to the property owned by the Marine Studios, Inc., in Township 10 South, Range 31 East, in Flagler County, Florida. The said leased area being shown in RED on the plat hereto attached as an exhibit and made a part hereof by reference.

TO HAVE AND TO HOLD the said leased premises unto the said Lessee for the term of five (5) years from and after August 18, 1956, subject, however, to the following covenants, terms and conditions:

> 1. The Lessee shall pay to the Lessors, on or before August 18th, of each year during the life of this lease, the sum of ten ($10.00) dollars representing annual rental payable in advance.
>
> 2. The Lessee shall not, without the previous license in writing of the Lessors, or their successors in office, assign, underlet or part with the possession or control of the said premises, or any part thereof.

3. The Lessee shall not do or suffer to be done, in or upon the said premises, any act which shall or may be a nuisance, annoyance, inconvenience or damage to the Lessors, their successors in office, residents of the neighborhood or to owners of land adjacent to the leased premises.

4. The Lessors and their successors in office, as well as their lawful agents and employees, shall have free entrance, at all reasonable times, to view the state and condition of the leased premises.

5. The Lessors hereby consent and give the Lessee permission to construct and maintain, or to maintain, barriers, at the north and south ends of the above described leased premises, for the purpose of preventing the use of the beach, within the leased area, by vehicular traffic.

6. The Lessee, by the acceptance of this lease, agrees that the general public may use or have access to any of the area hereby leased for bathing or other usual purposes; it being understood that the primary purpose of this lease is to give authority to the Lessee to construct and maintain, or maintain, barriers at the north and south property lines of the leased property in order to prevent or prohibit vehicular traffic from using the leased area.

7. This lease shall never be construed as extending any privileges beyond the boundaries of the premises hereby leased.

BLEED THROUGH POOR COPY

8. This lease is made upon the express condition that either the Lessors or the Lessee may terminate the same upon any anniversary date hereof, upon the giving of a written notice, of their intention to so terminate this lease, to the other party to this lease at least one year prior to such anniversary date.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA LEASE

No. 1171

THIS INDENTURE OF LEASE made and entered into this 14th day of April, 1958, by and between the Trustees of the Internal Improvement Fund of the State of Florida, hereinafter called Trustees, and James W. Clark, hereinafter called Lessee.

WITNESSETH:

That for and in consideration of the payment of the monies and the performance of the covenants contained herein on the part of the Lessee, the Trustees do hereby grant, lease and let for raising cattle and farming purposes only, unto Lessee the following described property, lying and being in Palm Beach County, Florida; to wit:

All of Section 1, less right-of-way for Levee L-8 and all of Sections 2, 12 and 13 T42S R38E Palm Beach County containing 2544 acres more or less.

TO HAVE AND TO HOLD the above described land to the Lessee for a period of Ten (10) years from the date hereof, subject to the following terms and conditions:

1. Lessee agrees to pay the Trustees for the leased premises the following amounts per acre: nothing the first two years; $1.00 the third year; $2.00 the fourth and fifth year; $3.00 the sixth year; $4.00 the seventh, eighth and ninth year; $5.00 the tenth year; all of which constitute the total consideration, averaging $2.50 per acre per year.

Amendment by Trustees May 5, 1960 makes lease become effective on entry of Final Decree in proceeding of LeRoy Collins, Gov., Petitioner v. Terry Cattle Co. (Common Law # 59 L-750A, Palm Beach County) Final decree expected July 1960.

The payment shall be made annually in advance, and shall be made on the anniversary date of the execution of this lease.

2. During the first two years of this lease the Lessee agrees to improve the premises in the amount of $34,750.00 by providing an access bridge, by constructing roads, fences, corrals and other facilities, and to furnish evidence satisfactory to the Trustees that such improvements and expenditures have been made.

3. This lease shall be restricted to use of the above described property for cattle raising and farming purposes only and any other or further use of said property shall constitute a breach of this lease sufficient to warrant cancellation of the lease by the Trustees and immediate re-entry into and upon said premises.

4. Lessee agrees to care for the premises by properly applying fertilizer and other minerals in proper amounts and at proper intervals as prescribed by the State Department of Agriculture.

BLEED THROUGH POOR COPY

5. Lessee agrees that all timber is reserved to said Trustees, and that only that timber which interferes with the proper operation of the land under this lease will be cut. If any timber is cut, Lessee agrees that title to such cut timber is in the Trustees to be disposed of as they see fit.

6. Lessee agrees that all minerals are reserved by the Trustees and nothing in this lease is to be construed as a lease of such mineral rights by said Trustees. The Trustees reserve the right to explore for and to mine and develop minerals and petroleum on or under the land herein described at any time, notwithstanding this lease or the rights granted hereby.

7. Lessee shall not take or remove any muck, earth, soil or any other substance from said land without the express written consent of the Trustees.

8. Lessee agrees to provide and maintain proper drainage canals and laterals when and where necessary, in accordance with the recommendations of the Central and Southern Florida Flood Control District.

9. Lessee assumes all responsibility for all damage caused by the operation of this lease and will in all respects save the Trustees harmless against any damage or liability which may result from or which may be caused by the operations of this lease. The Lessee further agrees to carry liability insurance in the amount of One Hundred Thousand and 00/100 Dollars ($100,000.00) with a company acceptable to the Trustees.

10. Lessee agrees that any buildings, structures, or improvements of any kind, which are of a permanent nature, and which are placed upon the premises during the period of this lease shall remain on the premises and become the property of the Trustees upon the expiration of this lease.

11. Lessee agrees that he will not cause or permit any waste, misuse or neglect of the property hereby leased. Further, he agrees that he will keep the premises in a clean and orderly manner in conformity with any local, county or State laws, and shall, at the expiration or termination of said lease yield the demised premises back to the Trustees in as good condition as at the date of Lessee's taking possession thereof, loss by storm, earthquake or other similar or dissimilar acts of God, and ordinary wear and tear, excepted.

12. In the event said lease terms shall be fully complied with, the Lessee shall have, at the expiration of the ten (10) year period herein specified, the right to negotiate a renewal of this lease, terms to be agreeable to both parties at that time.

13. The Lessee, in accepting this lease, does hereby agree that no claim of title to said land shall be made by reason of the occupancy or use thereof; that the title to said land is in the Trustees and the Lessee has no claim of any description thereto other than under this lease and upon the conditions herein stipulated.

14. The Lessee agrees that automatically upon the termination of this lease, all rights of Lessee to the use, occupancy and possession of said land shall terminate and the Lessee will thereupon immediately vacate the said land.

BLEED THROUGH POOR COPY

15. The Lessee will not without the previous written consent of the Trustees or their successors in office, assign, sublease, or part with the possession or control of the said premises or any part thereof.

16. Upon the neglect, failure, or refusal of the Lessee to keep, perform, or observe, in the manner and as herein provided, any of the terms, conditions, reservations and restrictions required of said Lessee by this agreement, than and in that event this agreement and lease shall be null and void and all rights and interests of said Lessee or any person or persons claiming under this lease shall cease and the leasehold estate herein conveyed shall immediately thereupon revert to the Trustees or successors in office and the Lessee and all persons claiming under him shall thereupon immediately vacate the said premises.

No. 1177

LEASE

This lease made this 15th day of April, 1958, by and between Trustees of the Internal Improvement Fund of the State of Florida, hereinafter referred to as lessors, and Max M. Singer, his heirs and assigns, of Dade County, Florida, hereinafter referred to as lessee, WITNESSETH:

In consideration of the mutual agreements of the lessors and lessee the lessors lease to the lessee and the lessee leases from the lessors the following described property in Dade County, Florida, to-wit:

A parcel of land in the City of Miami lying southwesterly of the intersection of NW 28th

Street and NW North River Drive in the SW¼ of Section 28, Township 53 South, Range 41 East, Dade County, Florida, more particularly described as follows: From the NE Corner of the SW¼ of said Section 28 run westerly along the north line of said SW¼, 648.7 feet to the intersection with the northerly extension of the west boundary of Lots 1, 2, 3 and 4, Block 11 of Riverside Manor as recorded in Plat Book 20, Page 80, Public Records of Dade County, Florida; thence southerly along said northerly extension 50.0 feet to the P.O.B.; thence continue southerly along said northerly extension, 152.41 feet to a point, said point being the most northerly corner of Lot 1, Block 11 of said Riverside Manor; thence southwesterly parallel to the southeasterly boundary and the extension of said Lot 1, 180.0 feet to the right-of-way line of the Miami Canal; thence northwesterly along said right-of-way line 440.85 feet to the intersection with a line 50 feet southerly of and parallel to the north line of the SW¼ of said Section 28; thence easterly along said line 50 feet southerly of and parallel to the north line of the SW¼, 445.0 feet, more or less, to the P.O.B. Containing 1.39 acres, more or less.

from April 15, 1958 to and including April 15, 1983, subject to the following terms and conditions:

(1) The lessee agrees to pay the lessors at their office in the City of Tallahassee, Leon County, Florida, beginning May 15, 1958, the following rentals: $395.00 per month for the first ten years of this lease; $450.00 per

month for the next five years of this lease; $500.00 per month for the next five years of this lease and $600.00 per month for the last five years of this lease, all rentals payable semi-annually in advance, providing, however, commencing at the end of the tenth year the annual rental shall be fixed at six per cent of the appraised value of the land, such appraisal to be made at the direction of lessors, and the annual rentals thereafter due and payable in each five year period shall be six per cent of said appraised value or the stipulated sum for said period, whichever be the greater.

(2) Should any installment of rent due hereunder be in default for a period of forty-five (45) days, then in such event the Trustees may terminate this agreement and the lessee be required to immediately vacate the premises.

(3) The lessee shall have the right to construct, build, repair and maintain buildings, railroad sidings, bulkheads, jetties, wharves, docks and other structures and agrees to keep such buildings and other structures in a good state of repair.

(4) The lessee agrees to pay all taxes or assessments of every sort and description which may be lawfully assessed against the property during the term of this lease.

(5) The lessee may not assign this lease or any portion thereof without first having obtained the written consent of the lessors. In the event of assignment approved by lessors, the assignee shall be required to furnish the same bond as required of the lessee, together with such documents as may be necessary and proper to evidence assignee's acceptance of the terms and conditions of this

lease. Notwithstanding the above, lessee may lease the premises or any portion thereof, provided, however, he shall not thereby be relieved of any personal and financial responsibility for the payment of rentals herein provided, nor from the performance of all conditions and covenants of this lease.

(6) The lessee shall have the right to remove all machinery, equipment, appurtenances and fixtures brought upon or installed on the premises, provided the same shall never become affixed to and become a part of the realty. The lessee covenants at the termination of this lease, whether at the expiration of the term hereof, or otherwise, to immediately yield possession to lessors. The lessee shall have the right, within ninety days from date of such termination, to remove therefrom all machinery, equipment, appurtenances or fixtures brought or installed on the premises, provided the same shall never have become affixed to and become a part of the realty. In the event of the lessee's failure so to remove the same, said property, at the expiration of said period of ninety days, shall become the property of the lessors.

(7) Lessee agrees to furnish a surety bond at his own cost and expense payable to the Governor of the State of Florida in the principal sum of Five Thousand ($5,000.00) Dollars with a surety company authorized to do business in this state, conditioned upon the faithful performance by the lessee of the covenants, obligations and duties imposed upon the lessee hereunder. Provided, however, the lessee may furnish the original bond covering a two year period but is required to furnish renewal certificate on said bond on or before January 1, 1960, and each two year period thereafter during the term of this lease.

(8) The lessee agrees that the lessors, or their duly appointed agents or employees, shall have free access to the premises to examine them at all reasonable times and places.

(9) The lessee covenants and agrees to leave the premises at the end of the term, or sooner termination of this lease, in good order and condition, ordinary wear and tear excepted and to clear the land of all debris which may result from the tenancy of the lessee.

(10) The lessee will comply with all lawful requirements, rules, regulations, laws and ordinances of any legally constituted authorities in any way affecting the property.

(11) All permanent improvements snall, at the termination of this lease, become the property of the lessors.

(12) All notices given to the lessee may be served by mailing the same to him at 6291 S.W. 63rd Court, South Miami, Florida, unless another address is designated in writing by the lessee to the lessors.

(13) Should the lessee breach any of the covenants, terms or conditions of this lease, other than failure to pay rent, the lessors may, at their option, give written notice to the lessee to vacate the premises within ninety (90) days and thereupon this lease shall be void and of no further force and effect.

(14) The lessee hereby agrees to keep and save the lessors harmless from all claims, loss or damage to persons or property sustained upon the premises from any cause whatsoever during the term of this lease.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA EASEMENT GRANT

NO. 1239

FOR AND IN CONSIDERATION of Seven Hundred Eighty-Three and 84/100 Dollars, ($783.84), in hand paid, receipt and sufficiency of which is hereby acknowledged, we, The Trustees of the Internal Improvement Fund of the State of Florida, hereinafter referred to as "Grantor" (whether one or more), do hereby grant unto Houston Texas Gas and Oil Corporation, a Delaware corporation, its successors and assigns, hereinafter referred to as "Grantee", the right to construct, maintain, inspect, operate, protect, repair, replace, change the size of, or remove a pipeline and appurtenances, for the transportation of natural gas, oil, petroleum products or any other liquids, gases or substances which can be transported through a pipeline, together with the right of ingress and egress to and from the same for the purposes aforesaid, over, under, through and across the following described lands, situated in Leon County, State of Florida, to-wit:

A strip of land 30 feet in width extending 15 feet either side of the following described survey line and traversing the following described property:

Commence at a point at the West line of Section 11, Township 1 North, Range 1 West 3921.6 feet North of the Southwest corner of said Section 11, thence run South 67° 33′ East 1010 feet, more or less, to Randolph meander line of Lake Jackson on the Western side of said lake, which is the

Point of beginning. Thence continue on the same course of South 67° 33′ East 808.35 feet, more or less, to the meander line on Eastern side of said lake.

In addition to the above-described 30-foot right of way, a strip of land 20 feet in width parallel to and contiguous with the southerly line of the afore-mentioned 30-foot easement may be used during the period of initial construction only.

TO HAVE AND TO HOLD said right of way and easement unto said Grantee, its successors and assigns forever.

It is agreed that the pipeline to be laid under this grant shall be constructed at sufficient depth below the surface of the ground to permit normal cultivation, and buried at sufficient depth below the natural bottom of Lake Jackson, whether submerged or exposed, in manner so that construction and or maintenance of said pipeline shall in no wise interfere with normal use and enjoyment of said Lake by the public, and Grantor shall have the right to fully use and enjoy the above-described premises, subject to the rights herein granted.

Grantee shall have the right to clear and keep clear all trees, undergrowth and other obstructions from the herein granted right of way, and Grantor agrees not to build, construct or create, nor permit others to build, construct or create any buildings or other structures on the herein granted right of way that will interfere with the normal operation and maintenance of the said line.

Grantee shall dispose of trees and timber not needed for construction of the pipeline by cutting tree trunks and larger limbs in lengths of no less than 8 feet, and shall stack same along the edge of the right of way, and all brush, trimmings, and stumps removed from the ditch line shall be burned or disposed of in a manner acceptable to Grantor. All construction and maintenance operations hereunder shall be and remain subject to approval of the Grantor's engineer.

Grantee agrees to pay to the then owners and to any tenant, as their interests may be, any and all damages to crops, timber, fences or other improvements on said premises that may arise from the exercise of the rights herein granted, said damages, if not mutually agreed upon, to be ascertained and determined by three disinterested persons, one of whom shall be appointed by the Grantor, one by the Grantee, and the third by the two so appointed, and the written award of such three persons shall be final and conclusive.

Any payment due hereunder may be made direct to the said Grantor or any one of them.

All of the rights of the Grantee hereunder may be assigned to a Trustee or Trustees under a deed and mortgage as security for indebtedness of the Grantee, and such right may be further assigned in connection with the enforcement of any such deed of trust and mortgage; the obligations hereunder of Grantee may be performed by such Trustee or Trustees or any further assignee without releasing Grantee therefrom but neither such assignment, the acceptance thereof, nor any performance hereunder by such Trustee or Trustees or further assignee, shall obligate such Trustee or Trustees or assignee to perform such obligations.

It is understood that the person securing this grant is without authority from Grantee to make any agreement with respect to the subject matter hereof not herein expressed.

The terms and conditions hereof shall be binding upon and inure to the benefit of the heirs, executors, administrators, devisees, successors, trustees or assigns of the parties hereto.

NO. 1213

LEASE-PURCHASE AGREEMENT

This agreement made and executed this 28th day of October, 1958, by and between the Trustees of the Internal Improvement Fund of the State of Florida, hereinafter referred to as the "Trustees" and Dead Lakes Water Management District, hereinafter called the "District",

WITNESSETH:

WHEREAS, said District was created by Chapter 57-1115, Laws of Florida, 1957, granting unto said District certain powers and authority over the Dead Lakes and Chipola River and all the tributaries of said waters lying south of the point where State Road 71 crosses the Chipola River and Scott's Ferry in Calhoun County, Florida, and

WHEREAS, said District is empowered to take, accept and use State funds made available to develop, conserve, utilize or dispose of the water resources and prevent floods in said area and to enter into any contracts and agreements necessary to carry out the provisions of the act, and

WHEREAS, the purpose of the District is to maintain, control and engage in the conservation, development, utilization and disposal of water within the boundaries of the District as described in said act, and

WHEREAS, the District has caused a comprehensive study to be made of water conditions in the Dead Lakes area and has formulated plans for the purpose of controlling water levels therein which require the construction of a dam or levee hereinafter called "project" within the area of the District, and

WHEREAS, the State Road Department of the State of Florida will shortly advertise for and receive bids for the construction of a bridge and approaches from State Road S-22 northeasterly across Dead Lakes in Gulf County, Florida, and thereafter enter into a contract, and

WHEREAS, the construction of the project contemplated by the District according to its plans and specifications may feasibly be accomplished in connection with the construction of the bridge and approaches of the State Road Department, and

WHEREAS, the State Road Department is agreeable to requesting and receiving bids for the construction of said project in connection with its contract for the construction of said bridge and approaches, and

WHEREAS, said District is empowered by law to require the purchase of an annual permit not to exceed $2.00 for the privilege of fishing within the waters of the District and is authorized and empowered to levy a special tax not to exceed one mill for the purpose of financing projects necessary to carry out the purposes of the act, and

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WHEREAS, the District has sought financial assistance from the Trustees to accomplish the construction of said project, and

WHEREAS, the District is authorized and empowered to enter into this agreement and all things have been done and performed to authorize its execution, and attaches its resolution empowering its members to enter the within agreement, and

WHEREAS, the Trustees have, by official action, agreed under the terms and conditions hereof to advance a sum not to exceed $60,000.00 to the District for the purpose of completing said dam or levee, and

WHEREAS, the project is an internal improvement and constitutes the performance of a governmental function by the District.

NOW, THEREFORE, for and in consideration of the sum of One ($1.00) Dollar paid by each party hereto to the other, the receipt whereof is hereby acknowledged, and in further consideration of the mutual and dependent covenants of the parties hereto and other good and valuable considerations hereinafter set forth, it is hereby agreed by and between the Trustees and the District as follows:

(1) That the Trustees are lending and advancing to the District a sum not to exceed $60,000.00, the specific amount, plus the necessary expenses and charges incurred by the Trustees calculated at three per cent (3%) of the entire loan, to be fixed at the completion of the project.

(2) That the District hereby authorizes and empowers the State Road Department of Florida to issue invitations to bid, receive bids and award the contract for the construction of said project and to do and perform all acts necessary to accomplish the construction of said project according to plans and specifications therefor approved by the District and State Road Department.

(3) The Trustees will, based upon the estimate of the contractor awarded the contract, but subject to final determination and approval of the State Road Department, pay such estimates unto said contractor on account of said project; provided, however, the total amount shall not exceed $60,000.00.

4) The District shall, upon receipt of any moneys by virtue of Chapter 57-423, Laws of Florida, 1957, deposit such amounts with the Trustees, to be expended by the Trustees in the same manner and under the same conditions as they shall expend the amount loaned to the district as provided by paragraph 3 of this instrument.

(5) It is agreed by the parties that for the purpose of facilitating this agreement, including its lease-purchase provisions hereinafter, title to the completed levee and all materials, machinery and fixtures therein or thereon shall be and the same are hereby vested in the Trustees by the District and shall remain therein until all of the lease-purchase payments are made to the Trustees by the District as hereinafter provided, at which time title to the levee and all properties incident thereto shall automatically be transferred to the District.

(6) The Trustees, as lessors, do hereby lease to the District, as lessee, the completed dam or levee, also referred to as project, to be constructed in Gulf County, Florida, as hereinabove set forth, together with all materials, machinery and equipment being a part of or used in connection with the operation and maintenance of said completed project until the sum of $_____ has been fully paid and discharged. The amount due and payable shall be ascertained and made certain upon the completion of the project, to which amount paid by the Trustees on account of the project shall be added a charge of three per cent (3%) upon the entire sum for services rendered by the Trustees in connection with their aiding in the construction of said levee or project. This agreement shall thereupon be supplemented to the extent of fixing all the sums required to be paid by the District and the exact date of each payment.

(7) The District agrees to pay to the Trustees the fair rental purchase value of said project in the amount of $_____, to be determined as set forth in paragraph (6) hereof, in the manner and at the times provided in paragraph (8) hereof.

(8) All rental sums due the Trustees from the District shall be repaid in equal annual installments over a period not exceeding six years. Each installment shall be paid annually in advance, commencing with the date upon which final payment is made by the Trustees to the contractor on account of the construction of the project. The first said installment shall, in addition to the principal amount thereof, include the three per cent (3%) handling or service charge upon each disbursement theretofore

made by the Trustees to the contractor, except the final payment, calculated from the date of said disbursement to the due date of the first annual installment. Thereafter the three per cent (3%) per annum handling and service charge is to be calculated on the entire principal sum advanced or loaned by the Trustees from the due date of the first installment for the entire six year period. The total of these two amounts shall be divided into six equal annual installments. Each installment, subsequent to the initial annual installment, shall be due and payable on a like date in each succeeding year until the entire amount is paid in full.

(9 The District does agree and covenant that all sums realized from the sale of said fishing permits issued from date hereof pursuant to Chapter 57-1115, Laws of Florida, 1957, except a reasonable amount to be approved by the Trustees, to be retained by the District to cover necessary repairs to the project and incidental expenses, are pledged for the use and repayment of the amount due the Trustees and in the event the proceeds therefrom shall not, in the judgment of the Trustees, be sufficient to retire the indebtedness, then the District will, by proper resolution, pursuant to the provisions of said Chapter 57-1115, Laws of Florida, 1957, direct the Boards of County Commissioners of Calhoun and Gulf Counties, Florida, to include in their respective annual budgets a levy not to exceed one mill against all taxable property in each of said counties, the proceeds of which shall be paid to the District when collected and said payment of annual minimum amount shall be a first charge against the proceeds of said annual levy.

(10) The District reserves the right to accelerate the payment of the annual installments required hereunder. All payments, in addition to the annual installment, shall be made on the anniversary date of such annual installment and in an amount equal to said annual installment.

(11) The District covenants and agrees that it will, during the term of this agreement, keep and maintain the project in good repair.

(12) Should default be made in the payment of any installment herein provided or any part thereof or in any of the covenants and agreements herein contained, the Trustees may, at their option, terminate the agreement upon giving written notice directed to the District at its office in Wewahitchka, Florida, to vacate and surrender its control and possession as lessee of said project within thirty days from the date of said notice, and the Trustees may at their option, cause a receiver without order of court to take charge of, manage and control said project and the District agrees and covenants that all of its funds and assets derived from any source whatsoever shall promptly be delivered to said receiver to be used for the purpose of completing this agreement. The District further covenants and agrees that it will execute all necessary and appropriate documents that may be required or convenient in order that said receiver shall have full power and control over said project, as well as its assets, including the right to receive and expend all sums that may accrue to the District, by taxation or otherwise, in connection with the operation and maintenance of the project and will peacefully surrender possession and control thereof.

(13) The Trustees or their authorized agents shall at all reasonable times and places have the right to inspect all records of said District, as well as the project.

(14) When the District shall have paid to the Trustees all sums due hereunder and performed all other conditions and covenants required of it, then the Trustees will execute proper instrument to evidence its release of any claim or right to said project.

(15) If, upon opening and considering the bids submitted by contractors for the construction of the levee or project, the project, in the judgment of the Trustees, is considered not to be financially feasible by reason of lack of funds presently available or reasonably to be anticipated by the District to retire the indebtedness, then in that event the Trustees may terminate this agreement by giving written notice to the District within ____ days from the opening of said bids. Thereupon both parties shall be relieved from their respective obligations hereunder to the same extent as though this agreement had never been made.

AGREEMENT

THIS AGREEMENT, made and entered into this 6th day of November, 1958, by and between the STATE ROAD DEPARTMENT OF FLORIDA, a component agency of the State of Florida, hereinafter referred to as the "Department;" the Trustees of the Internal Improvement Fund of the State of Florida, hereinafter referred to as the "Trustees," and the Dead Lakes Water Management District, hereinafter referred to as the "District."

WITNESSETH:

WHEREAS, the Department plans to construct a bridge and approaches from State Road S-22 northeasterly across Dead Lakes at Wewahitchka, Florida, said project being described as Job No. 51510-3601, Gulf County, and

WHEREAS, the District plans to construct a sheet pile spillway and appurtenances in the Chipola River, hereinafter referred to as the "Project," said Project being described as Job No. 51510-3602, for the purpose of controlling the water level in the Dead Lakes area, and

WHEREAS, said District was created by Chapter 57-1115 Laws of Florida, 1957, and is empowered to take, accept, and use State funds made available to develop, conserve, utilize, or dispose of the water resources and prevent floods in the area of the Dead Lakes and Chipola River, and all the tributaries of said waters lying south of the point where State Road 71 crosses the Chipola River and Scott's Ferry in Calhoun County, Florida, and to enter into contracts and agreements necessary to carry out the provisions of the act; and

WHEREAS, the State by virtue of the provisions of Chapter 57-423, Laws of 1957, has appropriated the sum of $100,000.00 to be used as a matching fund in the construction of a dam to control the water level on the Dead Lakes, provided an equal sum is made available by any County or Commission or Special District authorized by law to control the water level on said Dead Lakes, to match said State Funds; and

WHEREAS, the Trustees have agreed to lend and advance to the District a sum not to exceed $60,000.00; and

WHEREAS, under the terms hereof, there will be available a total sum not exceeding $180,000.00 for use by the Department on behalf of the District, which sum may exceed the cost of the construction of said sheet pile spillway and appurtanences, in which event, any excess over the cost thereof the District hereby agrees to contribute toward the cost of construction of said bridge and approaches; and

WHEREAS, the District and the Trustees have heretofore entered into a Lease Purchase Agreement under date of the 28th day of October, 1958, (which Agreement by reference hereto is made a part hereof) spelling out the details of the financial arrangements made between the District and the Trustees, and

WHEREAS, the District is to contribute toward the cost of said Project all uncommitted funds which it has on hand, which it has collected from fresh water fishing permits and ad valorem taxes levied in support of said Project, and

WHEREAS, the District and the Trustees have requested the Department to issue invitations to bid, receive bids and award the contracts for the construction of said Project and to do and perform all acts necessary to accomplish the construction of a spillway according to plans and specifications prepared for the District by the J. B. Converse Company of Mobile, Alabama, and

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WHEREAS, it has been mutually agreed that it would simplify the accounting procedures and expedite the completion of said Project, if all funds which have been appropriated and/or pledged or loaned toward the cost of the completion of said Project were placed in the hands of the Trustees for disbursement upon monthly requisitions from the Department as the contract earnings accumulate,

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that the Department, for and in consideration of the premises and the sum of $1.00 to it in hand paid by each of the other parties hereto, the receipt whereof is hereby acknowledged, does hereby covenant and agree as follows:

1. That it will, in conjunction with the letting of bids for the construction of a bridge and approaches from State Road S-22, northeasterly across Dead Lakes in Gulf County, Florida, issue invitations to bid, receive bids and award the contract for the construction of a sheet pile spillway and appurtenances according to plans and specifications therefor prepared by the J. B. Converse Company of Mobile, Alabama, for the District, and will furnish the general supervision necessary for the completion of said spillway. It is further understood and agreed, that the preparation of the plans and specifications for said spillway is a direct responsibility of the District, and the District is, and does hereby assume, full legal responsibility for all sums due and owing, or to be owed, to the J. B. Converse Company of Mobile, Alabama, for its services in connection with the design and operation of said spillway. It is further understood and agreed that the

J. B. Converse Company shall be retained by the District to make periodic monthly inspections of said spillway during construction and to certify final acceptance for the District, and the District does hereby covenant and agree to save the Department harmless and free of any responsibility for the successful operation of said spillway.

2. That the cost of construction supervision to be furnished by the Department on said project and its other costs, exclusive of all services to be rendered by the J. B. Converse Company, will be paid by the Department and charged directly to the bridge and approaches to be constructed by the Department, as hereinabove outlined.

IT IS MUTUALLY COVENANTED AND AGREED between the parties hereto that all funds appropriated, pledged or loaned by any or all of the parties hereto shall be placed in the hands of the Trustees for disbursement, and paid to the Department, upon monthly requisition as the contract earnings accumulate.

IT IS FURTHER MUTUALLY COVENANTED AND AGREED between the Department and the District that the District shall indemnify and save harmless the Department from any and all claims for damages to persons or properties of any nature whatsoever, specifically including those which might be incurred to either the upstream or downstream owners due to the construction and operation of said spillway.

No. 1274

PERMIT

STATE OF FLORIDA
COUNTY OF LEON

THIS PERMIT AND LICENSE, made this 22nd day of September A.D. 1959 by and between the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA as the Permittors, and LEE F. FRANKLIN, whose address is 2146 N.W. 13th Street, Miami 35, Dade County, Florida, as the Permittee;

WITNESSETH: That, whereas, application having been made by Lee F. Franklin, dated May 15, 1959 and approved by the said Trustees at their meeting held August 11, 1959, for Permit and License on terms hereinafter set forth,

NOW THEREFORE, the Trustees of the Internal Improvement Fund, for and in consideration of the premises and the sum of One Dollar paid by the Permittee, receipt of which is hereby acknowledged, and in consideration of the covenants hereinafter set forth, to be kept and performed by the Permittee, have granted, and do hereby grant, unto said Lee F. Franklin, his heirs and assigns, a license and permit, subject to the conditions hereinafter set forth, to construct, erect, install and maintain one (1) advertising signboard, not to exceed ten feet by twenty feet, upon lands of the Permittors, at least fifteen (15) feet Easterly from the Easterly right of way line of State Road 5 (U.S. Highway No. 1), said sign to be located approximately 500 yards from camp, in Section 22, Twp. 22 S., Rge. 39 E., Monroe Cty.

This Permit and License is granted subject to the following conditions and provisions, viz:

A. The second party shall (1) pay to the Permittors, in advance an annual rental of Fifty Dollars ($50.00), for the privilege herein granted; (2) maintain said signboard in good repair at all times so the same will not be objectionable in appearance; (3) comply with provisions of the State of Florida Outdoor Advertising Law and all local regulations; and (4) remove said signboard upon the termination of this Permit and License as hereinafter provided.

(B) This Permit and License shall be and remain subject to revocation and cancellation (1) for violation of the above mentioned conditions which, by the Permittee's acceptance of this Permit and License shall be deemed covenants; or (2) upon sixty day's notice of cancellation in writing by the Permittors to the Permittee at his address recited above.

(C) Acceptance of this Permit by Permittee shall be deemed a covenant of complicance with the conditions hereinabove set forth.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA

EASEMENT

No. 1326

THIS EASEMENT, granted this 14th day of March, A.D. 1960 by the TRUSTEES OF THE INTERNAL IM-

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PROVEMENT FUND OF THE STATE OF FLORIDA, as the Grantors and FLORIDA POWER AND LIGHT COMPANY, a corporation, of Miami, Florida as the Grantee;

WITNESSETH: That the Grantors, for and in consideration of the sum of Seventy Dollars ($70.00) to them paid by the Grantee, receipt of which is hereby acknowledged, and in pursuance of authorization by the Grantors in meeting December 29, 1959, have granted, and by these presents do hereby grant, unto said Grantee, its successors and assigns, an easement and license for the installation and maintenance of seven stub poles and appurtenant guys and anchors upon the locations set forth below, in Indian River County, Florida, to-wit:

No. 23E15	130 feet N. of South line of SW¼ of SW¼;
No. 24E1	840 feet N. of South line of SW¼ of SW¼;
No. 24E7	240 feet N. of South line of SW¼ of NW¼;
No. 24E8	590 feet N. of South line of SW¼ of NW¼;
No. 24E10	60 feet S. of North line of SW¼ of NW¼;
No. 24E12	645 feet N. of South line of NW¼ of NW¼;
No. 24E13	355 feet S. of North line of NW¼ of NW¼;

All in Section 4, Township 32 South, Range 39 East, Stub Poles to be located approximately 10 feet East of new drainage ditch adjacent and parallel to West boundary of said Section 4, with down guys and anchors 20 feet East of said Stub Poles.

This easement and license is granted subject to the following provisions, viz:

1. This easement confers only a right of use for the purpose expressed herein and no title to the land shall enure to or vest in the Grantee under this instrument.

2. In the event any area occupied by said stub poles, down guys or anchors shall be required for a public purpose, the Grantee will cause the stub poles, down guys or anchors, within the area so required, to be relocated beyond the limits of the area required for such public purpose, upon sixty days advance notice in writing by the Grantors to said Grantee, such removal and relocation to be accomplished without cost to said Grantors.

3. The Grantee agrees to save the Grantors harmless from all damages or claims of damage or injury arising out of its exercise of rights under this easement.

4. The Grantors reserve the right to make such use of the within described lands as will not interfere with the Grantees' exercise of its rights hereunder.

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TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA

GRAZING LEASE

No. 1360

THIS AGREEMENT AND LEASE made and entered into on this 7th day of June, A.D. 1960, between the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, hereinafter called the Lessors, and MRS. KATHERIN M. WAGGAMAN, of the County of Highlands, State of Florida, hereinafter called the Lessee,

WITNESSETH: That for and in consideration of the payment of the annual rental hereinafter provided for, and the other terms and conditions stated herein, the Lessors do hereby let and lease to the said Lessee, her heirs and assigns, exclusively for grazing purposes, the following lands situate, lying and being in the County of Highlands, and State of Florida, to-wit:

Lots 4, 5, 6, 7, SE¼ of NW¼, SE¼, E½ of SW¼ Section 27, containing 500.33 acres.

Lots 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, Section 28, containing 362.60 acres.

Lots 7 and 14, Section 33, containing 20.24 acres.

Lot 1, E½ of NW¼, Section 34, containing 131.91 acres.

NE¼, E½ of SE¼, W½ of SE¼, E½ of SW¼, Section 34, containing 400.00 acres.

All the above lying and being in Township 35 South, Range 31 East, Highlands County, containing a total of 1,415.08 acres.

TO HAVE AND TO HOLD the above described land unto the said Lessee for a period of three (3) years from the 10th day of July, 1967, unless this lease be sooner cancelled as hereinafter provided.

The terms and conditions on which this lease is executed are as follows:

1. The Lessee agrees to pay to the Lessors for the use of said premises Two Thousand Four Hundred Seventy-Six and 39/100 ($2,476.39) Dollars per annum, based on an annual rental of One Dollar and 75/100 ($1.75) Dollars per acre, due and payable annually in advance, the first annual payment being the Two Thousand One Hundred Twenty-two and 62/100 ($2,122.62) Dollars which are to be paid to the Lessors upon delivery of this lease. The annual periods for the life of this lease shall thereafter begin on the 10th day of July.

2. The said Lessee, her heirs and assigns, shall have the full and free right of ingress and egress to, from, and upon the said lands for a period ending July 10, 1970, for the purpose of utilizing said land for grazing purposes only and does not include the exclusive right to hunt or fish.

3. The Lessee will not without the previous written consent of the Lessors or their successors in office, assign, sublease, or part with the possession or control of the said premises or any part thereof.

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4. The said Lessee, her heirs, assigns, agents, and employees will do as little injury and damage as possible to the timber or any improvements that may be on said lands and will make compensation to the Lessors for all injury and damage so done.

5. The Lessee shall save the Lessors harmless from any liability to any third persons or property which might result from operations conducted by the Lessee under the terms of this lease.

6. The Lessors or their duly authorized agents shall have the right at any and all times to inspect said lands and the works of the Lessee in any matter pertaining to this agreement and lease.

7. This lease shall be subject to termination by the Lessors upon written notice of at least one hundred and eighty (180) days before such termination.

8. The Lessors assume no liability or obligation with reference to condition of lands or water levels at any time, and it is agreed to by the parties that the Lessors shall be exempt from all liability arising out of claims or damage resulting from flooding or other conditions caused by excessive water.

LEASE

No. 1436

This agreement and lease made this 23rd day of November, 1960, by and between the State of Florida, by and through the Trustees of the Internal Improvement Fund of the State of Florida, hereinafter called the lessor,

and Pahokee Farms, Inc., a corporation, its successors and assigns, with its principal place of business in Pahokee, Florida, hereinafter called the lessee, WITNESSETH:

That the lessor for and in consideration of the sum of $5,000.00, the receipt where of is hereby acknowledged, together with other payments to be made as hereinafter required, does hereby lease for agricultural purposes only to the said lessee for a period of fifteen (15) years from November 23, 1960, the following described lands in Palm Beach County, to-wit:

(a) That composite tract of permanently reclaimed lake bottom lands formerly known as Pelican Bay in Sections 25, 35 and 36, Township 42 South, Range 36 East; Sections 19, 30 and 31, Township 42 South, Range 37 East; Section 1, Township 43 South, Range 36 East; and Sections 5, 6, 7 and 8, Township 43 South, Range 37 East, lying Northerly of the East Shore Drainage District canal right of way, lakeward of old Everglades Drainage District Levee and landward of the U.S.-Lake Okeechobee Levee excepting those areas within rights of way of State Roads 717 (715) and 717-A, and subject to easement to Florida Power and Light Company for an electric distribution line system; also excepting a tract in North half (N½) of Section 7, Township 43 South, Range 37 East, bounded on the West by right of way of State Road 717 (715) and lying South of Lateral Canal No. 17 and projection of its course Westerly to State Road 717 (715), all as shown on

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map attached hereto and made a part hereof, the land herein described for lease including parcels shown on said map as "A," "B" and "C" and 1 to 36 both inclusive, and aggregating 2920 acres more or less.

(b) A site for pump or power facilities, or both, as may be needed East of the centerline of the U.S.-Lake Okeechobee Levee at or near Culvert 12-A in said Levee, subject to easement to the United States of America for said Levee and maintenance of same.

upon the following terms and conditions:

(1) The lessor reserves the right in its judgment and discretion to cancel this lease (a) on one (1) year's written notice to lessee, as to the following tracts shown on the map attached, or such portions thereof as it may determine are required for a specified public use, viz: Tract "A" for municipal garbage disposal uses by the City of Pahokee, estimated at fifty-five (55) acres; Tract "B" for Palm Beach County airport industrial area, estimated at one hundred and ninety-five (195) acres; Tract "C" for Palm Beach County airport extension, estimated at seventy-five (75) acres; Tracts 34, 35 and 36 for public purposes of the City of Belle Glade, estimated at two hundred and fourteen (214) acres; (b) on two year's written notice as to Tracts 27 to 33, both inclusive, for state institutional uses, four hundred and ninety-four (494) acres, more or less. In the events Tracts "A", "B" and "C" and 27 to 33, both inclusive, or any portion thereof, shall be withdrawn from the premises as provided for in this paragraph, such withdrawn areas shall remain, for the duration of this

lease, subject to easement in behalf of lessee in and to such roads, bridges, canals or other facilities now in place or placed or developed thereon by the lessee, as may be needed for its ingress, egress and maintenance of drainage and water control for areas remaining under this lease. The acreage shown upon the plat hereto attached shall govern the calculation of acreage subject to this lease and the consequent payment of rentals in the absence of a survey as hereinafter provided in paragraph (16) hereof.

(2) Said lessee shall have the right to construct, install, operate and maintain at its own expense all works of reclamation necessary for such lands as may be deemed desirable by said lessee to make said lands suitable for agricultural purposes and the lessee shall have the use of all works heretofore constructed or provided on said lands for the purposes aforesaid.

(3) Upon the date possession of the premises is made available to the lessee, the lessee agrees to immediately make further payment of rental at the rate of $54,020.00 as semi-annual rental for the initial semi-annual lease period ending May 22, 1961, the sum due and payable for said initial semi-annual period to be prorated as of the date of the availability of possession, against which calculated rental the sum of $5,000.00 paid at the time of execution of this shall be credited. Thereafter the sum of $54,020.00 shall be paid semi-annually on November 23 and May 23, during the term of this lease. Should the lessee fail to make the semi-annual payment of rentals on the due date, or within forty-five (45) days from date thereof, such failure shall constitute a default by the lessee and the lessor may at its option immediately terminate this lease. Should any land described in paragraph

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(1) be withdrawn as therein provided, then in that event the rentals reserved to the lessor by this lease shall be reduced by a sum equal to Thirty-seven ($37.00) Dollars annual rental for each acre withdrawn, provided any such reduction shall be prorated as of the effective date of the withdrawal of the lands.

(4) The lessee shall not take or remove any muck, earth, soil or any other substance from said lands.

(5) This lease does not cover petroleum or petroleum products and does not give the right to drill for or develop the same.

(6) That the lessor or its duly authorized agents shall have the right at any and all times to inspect said lands and the works of the lessee in any matter pertaining to this agreement and lease.

(7) That the lessee will not, without previous consent in writing of the lessor, assign this agreement and lease or any of the rights thereunder, or any part thereof.

(8) The lessee agrees for itself, its successors and assigns that it will not do, or suffer to be done, in, on or upon said lands or as affecting said lands any act which may result in damage or depreciation of value to the property hereby leased, or any part thereof.

(9) The lessee shall have the right to remove all machinery, equipment, appurtenances and fixtures installed on the premises, provided the same shall never become affixed to and become a part of the realty. The lessee covenants that at the termination of this lease,

whether at the expiration of the term hereof, or otherwise, to immediately yield possession to the lessor. The lessee shall have the right, within ninety days from date of such termination, to remove therefrom all machinery, equipment and appurtenances installed on the premises, provided the same shall never have become affixed to and become a part of the realty. In the event of the lessee's failure so to remove the same, said property, at the expiration of said period of ninety days, shall become the property of the lessor.

(10) All permanent improvements shall, at the termination of this lease, become the property of the lessor.

(11) The lessee shall be responsible to the lessor for the reasonable protection of said lands against fire and damage therefrom.

(12) The lessor assumes no liability or obligation with reference to condition of lands or water levels at any time.

(13) The lessee covenants and agrees to maintain canals and drainage facilities upon the leased premises and agrees to pay any and all drainage assessments or taxes of every sort and description which may be lawfully levied against the premises.

(14) The lessee agrees to procure and maintain fire and windstorm insurance for at least 80% of the full insurable value on any buildings located upon the premises at the commencement of the term of this lease.

(15) The lessee agrees that the premises, within a 2,000 foot radius from the existing Federal Navigational Range Station (situate in the NW¼ of Section 36, Township 42 South, Range 36 East) are subject to the restrictions imposed by that certain zoning and clearing agreement between the Trustees of the Internal Improvement Fund and the United States by and through the Civil Aeronautics Administration, which said agreement is dated June 4, 1958, to the same extent as though the same were set out verbatim herein and made a part hereof.

(16) It is mutually agreed that the estimated acreage as herein provided has been accepted by both parties for the purpose of calculating rentals due, provided, however, the lessee may at its own expense furnish a survey by a registered land surveyor who is satisfactory to the lessor, showing the acreage as calculated from said actual survey and said surveyed acreage shall thereafter fix the liability of the lessee for the payment of future rentals beginning with the next succeeding semi-annual installment of rent herein provided.

(17) The lessee covenants and agrees to leave the premises at the end of the term, or upon sooner termination of this lease, in good order and condition, ordinary wear and tear excepted.

(18) The lessee will comply with all lawful requirements, rules, regulations, laws and ordinances of any legally constituted authority in any way affecting the property.

(19) All notices given to the lessee may be served by mailing the same to it at Pahokee, Florida, unless another address is designated in writing by the lessee to the lessor.

(20) Should the lessee breach any of the covenants, terms or provisions of this lease other than the payment of rent, the lessor may at its option give written notice to the lessee to remedy such breach within ninety days or in the event of failure by the lessee to so remedy the breach to the satisfaction of the lessor this lease shall be void and of no further force and effect.

(21) The lessor agrees that in the event of withdrawal of Parcel "C" for Palm Beach County Airport Extension, said Palm Beach County will be required by lessor to provide adequate drainage facilities, equal in function and capacity to the then existing Canal "A" across said land into the existing Culvert 12-A in the U.S.-Lake Okeechobee Levee, without disruption or impedance of pumping or power facilities which function in connection with said Canal "A" and said Culvert.

(22) It is mutually agreed that should any dispute arise between the parties hereto relating to this lease which they are unable to settle between themselves, then in that event such dispute shall be settled by arbitration by the lessor appointing one arbitrator, the lessee a second and the two a third arbitrator, as provided by Chapter 57, Florida Statutes. The decision of the arbitrators shall be binding on all of the parties hereto.

SUPPLEMENTAL AGREEMENT ALTERING TERMS OF LEASE #1436

This Agreement made and entered into this 21st day of February, 1961, by and between the State of Florida, by and through the Trustees of the Internal Improvement Fund of the State of Florida, hereinafter called lessor and

Pahokee Farms, Inc., a Florida corporation, its successors and assigns, with its principal place of business in Pahokee, Florida, hereinafter called the lessee, to alter the provisions of that certain lease #1436 heretofore entered into by the parties hereto on the 23rd day of November, A.D. 1960, WITNESSETH:

(1) That in the second paragraph of said lease on page one, line six, strike out the date November 23, 1960 and insert in lieu thereof the date December 31, 1960, the purpose of this change of date being to make the fifteen year period of the lease to become effective as of December 31, 1960.

(2) That paragraph number (3) of said lease is hereby cancelled and the following shall constitute the agreement between the parties hereto as to the matters referred to in this paragraph.

Lessee shall have immediate possession of the leased premises upon the execution of this supplemental agreement and the lessee agrees to immediately prepay to lessor the rental payments provided for herein for the period from May 1, 1961 through December 31, 1961, at the rate of $108,040.00 annual rental for a total of 2,920 acres, less the sum of $5,000.00 paid at time of execution of this lease and which sum is now held by lessor to be applied as a credit against first rental payment to be made by lessee. Thereafter the sum of $54,020.00 shall be paid semi-annually on July 1st and January 1st during the term of this lease. Should the lessee fail to make the semi-annual payment of rentals on the due date, or within forty-five (45) days from date thereof, such failure shall constitute a default by the lessee and the lessor may at its option

immediately terminate this lease. Should any land described in paragraph (1) be withdrawn as therein provided, then in that event the rentals reserved to the lessor by this lease shall be reduced by a sum equal to Thirty-seven ($37.00) Dollars annual rental for each acre withdrawn provided any such reduction shall be prorated as of the effective date of the withdrawal of the lands, using the date of May 1, 1961, the date when rental payments commenced as herein provided, as the date for calculating such proration for the year 1961 and January 1 for each year thereafter.

SECOND SUPPLEMENTAL AGREEMENT ALTERING TERMS OF LEASE #1436

WHEREAS, the undersigned Trustees of the Internal Improvement Fund of the State of Florida entered into a fifteen (15) year lease on November 23, 1960, with Pahokee Farms, Inc., a corporation, for the use in agricultural purposes only, of the therein described lands, and

WHEREAS, the said Trustees on February 21, 1961, entered into a supplemental agreement altering the terms of the aforesaid lease #1436, and

WHEREAS, the lessee, Pahokee Farms, Inc., submitted to the Trustees a request for extension of the lease for a period of ten (10) years from and after the expiration date shown in said lease, and

WHEREAS, the Trustees are advised by their agents that the lessee, Pahokee Farms, Inc., has made substantial and beneficial improvements to the land thus leased, and said lessee has made representation that substantial addi-

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tional improvements will be made on and to said lands in the event the request for the two (2) five-year extensions of this lease is approved by the Trustees, and

WHEREAS, the Trustees at their meeting of October 12, 1965, considered this request and in recognition of the matters set forth in their application and recited herein, approved the granting of two (2) five-year extensions as hereinafter set forth, now

THEREFORE, in consideration of the above, this agreement made and entered into this 12th day of October, 1965, by and between the State of Florida, by and through the Trustees of the Internal Improvement Fund, herein called lessor, and Pahokee Farms, Inc., a Florida corporation, its successors and assigns, hereinafter called the lessee, to make a second alteration in the provisions of that certain lease #1436, heretofore entered into by the parties hereto on the 23rd day of November 1960; WITNESSETH:

That in the second paragraph of the aforesaid lease on Page 1, Line 6, strike out the word and figures fifteen (15), and insert in lieu thereof the following words and figure, twenty-five (25).

That in the second paragraph as aforesaid, in line 6, after the figure 1960, and before the word, "the," insert the following: It being the intent of the parties hereto that the lessee be granted two (2) five-year extensions from and after expiration of the original lease period which was to have ended November 23, 1975, with rental after November 23, 1975, to be a sum of money to be fixed by the Lessor Trustees on or before the commencement of each

five year extension, which sum shall be based upon an appraisal to be made under the supervision of the Trustees before the commencement of each five (5) year extension period to determine the fair market value of the land for rental purposes considering the highest and best use of said land.

LEASE

NO. 1447

WHEREAS, the Trustees of the Internal Improvement Fund of the State of Florida, hereinafter called "Trustees", and one James W. Clark, on the 14th day of April, 1958, entered into a lease covering the property hereinafter described, designated lease no. 1171, and

WHEREAS, the same James W. Clark did thereafter, by instrument dated March 20, 1959, assign said lease to Four Square Ranches, Inc., a corporation, and

WHEREAS, said lease was amended by instrument dated May 5, 1960, and

WHEREAS, the assignee of the said James W. Clark, that is to say Four Square Ranches, Inc., a corporation, hereinafter designated "lessee", and the Trustees have mutually agreed to cancel and discharge the obligation of said lease no. 1171 and enter into the within lease, NOW, THEREFORE,

This lease made and entered into this 29th day of December, 1960, by and between the Trustees and the lessee, WITNESSETH:

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That each of the parties hereto does hereby release and forever discharge the other of and from any and all obligations, provisions and performance of that certain lease designated no. 1171, dated April 14, 1958, as amended, and agrees that the within instrument shall supersede the terms and provisions thereof.

That for and in consideration of the monies and the performance of the covenants contained herein on the part of the lessee the Trustees do hereby grant, lease and let for agricultural purposes only unto the lessee the following described property in Palm Beach County, Florida, to wit:

> All of Section 1, less right of way for Levee L-8 and all of Sections 2, 12 and 13 T42S R38E Palm Beach County containing 2544 acres more or less.

to have and to hold the above described land to the lessee for a period of twenty-five (25) years from date a way of ingress and egress shall be obtained by the lessee under decree of Court having jurisdiction or by procurement of adequate easements therefor, such date to become the effective date of this lease and to which reference herein is made for anniversary dates, said effective date to be fixed by written instrument executed by the parties; this lease being subject to the following further terms and conditions:

(1) Lessee agrees to pay to the Trustees as rentals for the leased premises the following amounts per acre: Nothing for the first two years; $1.00 the third year; $2.00 the fourth and fifth years.

Immediately prior to the beginning of the sixth year of this lease, the eleventh year of this lease, the sixteenth

year of this lease and the twenty-first year of this lease the Trustees shall have the leased premises appraised by an appraiser of their own choosing at each of said periods above mentioned and such appraisal shall be multiplied by the percentage of 4.4 per cent for the purpose of fixing the annual rentals due hereunder for the sixth through the tenth years, the eleventh through the fifteenth years, the sixteenth through the twentieth years and the twenty-first through the twenty-fifth years, respectively, as the case may be. Beginning with the sixth year, the eleventh year, the sixteenth year and the twenty-first year, the annual rental so computed shall be paid for the respective five year periods following.

Each payment shall be made annually in advance on the anniversary date of the effective date of this lease.

(2) The lessee covenants and agrees that it will, within the first two year period of its term, in lieu of the payment of rentals, place improvements upon the premises in the amount of not less than $34,750.00 by providing an access bridge, constructing of roads, fences and other facilities and furnish satisfactory evidence of the completions of said improvements and expenditures to the Trustees.

(3) The premises shall be used for agricultural purposes and no other purpose.

(4) The lessee agrees to care for the premises by properly applying fertilizer and other minerals in the appropriate amounts and at proper intervals as prescribed by the State Department of Agriculture.

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(5) Lessee agrees that all timber is reserved to said Trustees and that only such timber which interferes with the proper use of the land under this lease will be cut. Should any timber be cut, the title to the same shall remain in the Trustees to be disposed of as they see fit.

(6) Lessee agrees that all minerals are reserved by the Trustees and nothing in the lease shall be construed so as to grant any minerals or oil rights to the lessee. The Trustees reserve the right to explore for and mine minerals and petroleum on or under the land herein described at any time notwithstanding this lease or the rights granted hereby.

(7) Lessee shall not take or remove any muck, earth, soil, rock or any other substance from the premises without the express written consent of the Trustees.

(8) Lessee agrees to provide and maintain proper drainage canals and laterals where necessary in accordance with the recommendation of the Central and Southern Florida Flood Control District.

(9) Lessee assumes all responsibility for all damage caused by the operation of this lease and will in all respects save the Trustees harmless against any damage or liability which may result from or which may be caused by the operations of this lease. The Lessee further agrees to carry liability insurance in the amount of One Hundred Thousand and 00/100 Dollars ($100,000.00) with a company acceptable to the Trustees.

(10) The lessee shall have the right to remove all machines, equipment, appurtenances and fixtures installed

upon the premises provided the same shall not have become affixed to and become a part of the realty, within ninety (90) days from the date of the termination of this lease. Should the lessee fail so to remove the same said property at the expiration of said period of ninety (90) days shall become the property of the Trustees.

(11) All permanent improvements shall at the termination of this lease become the property of the Trustees.

(12) The lessee shall be responsible to the Trustees and their successors in office for the reasonable protection of said premises against fire and damage therefrom.

(13) The lessee covenants and agrees to leave the premises at the end of the term or upon sooner termination of this lease in good order and condition, ordinary wear and tear excepted.

(14) The lessee will comply with all lawful requirements, rules, regulations, laws and ordinances of any legally constituted authority in any way affecting the property.

(15) All notice given to the lessee may be served by mailing the same to it at P. O. Box 2407, Bradenton, Florida unless another address is designated in writing by the lessee to the Trustees.

(16) The lessee will not, without previous consent in writing from the Trustees, assign this agreement and lease or any of the rights thereunder or any part thereof.

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(17) In the event of the failure to pay any annual installment of rent within thirty (30) days from due date the Trustees may at their option immediately terminate this lease. Should the lessee breach any of the covenants, terms or provisions of this lease other than the payment of rent the Trustees may at their option give written notice to the lessee to remedy such breach within ninety (90) days and in the event of failure by the lessee to so remedy the breach within said period this lease shall automatically and without further notice be void and of no further force and effect.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA

LEASE

LEASE NO. 1598

THIS LEASE, made this 26 day of August A. D. 1961, by and between the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA hereinafter referred to as the Lessor and MAX MOCK and HARVEY ARRINGTON, Route 2, Moore Haven, Glades County, Florida, hereinafter referred to as the Lessees,

WITNESSETH: That the Lessor in pursuance of authorization on April 25, 1961 and in consideration of the sum of Fifty Dollars ($50.00) paid by the Lessees to the Lessor, receipt of which is hereby acknowledged, and of the rentals and covenants to be paid and kept as hereinafter provided, have demised and leased, and by these presents do hereby demise and lease on a month to month basis, unto said Lessees the following described land in Glades County, Florida, to-wit:

Tract in Section 10, Township 41 South, Range 32 East, being part of the Levee Berm of Lake Okeechobee Rim Levee Div. 3, and described as:

Beginning at a point in the West line of a larger tract of 15.26 acres owned by the Lessor herein distant 524.06 feet South of the intersection of said West line with the Southwest line of Navigation and Floodway Channel, thence along the West line of said larger tract South 0 degrees 20 minutes 27 seconds West 230 feet to its intersection with Toe of Levee; thence along the Toe of the Levee 325 feet to a point; thence South 89 degrees 39 minutes 33 seconds East 565 feet more or less to the Southwest line of said Navigation and Floodway Channel; thence Northwesterly along said Channel line to its intersection with a line drawn South 89 degrees 39 minutes 33 seconds East from the point of beginning; and thence North 89 degrees 39 minutes 33 seconds West 475 feet more or less to the point of beginning, and containing 6 acres more or less.

as and for a commercial camp site, being premises known as "Harvey's Camp", subject to the following provisions, viz:

1. The Lessees covenant and agree to pay to the Lessor in advance, beginning on the date hereof, a monthly rental of Fifty Dollars ($50.00) during the term of this lease, the consideration paid and acknowledged received hereinabove being rental for the month beginning with the date of this lease.

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2. Lessor reserves the right to cancel and terminate this lease by notice in writing to the Lessees at their address set forth hereinabove, such cancellation and termination to become effective ninety (90) days from and after the date of mailing of said notice.

3. The Lessees covenant and agree to save the Lessor harmless of and from all claims and damages arising out of their occupation and use of the leased premises.

4. Lessees covenant and agree to vacate the leased premises upon termination of this lease and remove from said premises all improvements and equipment thereon owned by the Lessees or under custody of said Lessees.

5. This lease confers no title to land but grants only a limited right of use, subject to termination by the Lessor as hereinabove provided.

6. The Lessees shall not assign, sublease, or part with possession or control of the premises or any part thereof without the previous written consent of the Lessor or their successors in office.

7. The Lessor or their duly authorized agents shall have the right at any and all times to inspect said lands in any matter pertaining to this lease.

8. The Lessee shall not take or remove any muck, earth, soil or any other substance from said lands.

9. This lease does not cover petroleum or petroleum products and does not give the right to drill or explore for the same.

10. The Lessor assumes no liability or obligation with reference to condition of lands or water levels at any time and it is agreed to by the parties hereto that the Lessor shall be exempt from all liability arising out of claims of damage resulting from flooding or other conditions caused by excessive water.

11. The Lessees agree to furnish Lessor a good and sufficient surety bond in the amount of Ten Thousand and 00/100 Dollars ($10,000.00), to guarantee faithful performance of the covenants of this lease.

12. That should the Lessees, their successors or assigns, at any time fail to live up to and carry out any of the terms and conditions of this lease, that then and in that event the Lessor shall have the right to cancel the same and stop further use of the said property hereunder.

ASSIGNMENT OF INTEREST IN LEASE

This Assignment of Interest in Lease made this 14th day of July A. D., 1969, by and between MAX MOCK and GENEVA MOCK, his wife, hereinafter referred to as Assignors, and HARVEY ARRINGTON, hereinafter referred to as Assignee, WITNESSETH:

Whereas, MAX MOCK and HARVEY ARRINGTON are the Lessees of that certain lease from the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, dated the 26th day of August A.D. 1961, under Lease No. 1598, wherein and whereby the Lessor leased unto Lessees the hereinafter described property located in Glades County, Florida,

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Tract in Section 10, Township 41 South, Range 32 East, being part of the Levee Berm of Lake Okeechobee Rim Levee Div. 3, and described as:

Beginning at a point in the West line of a larger tract of 15.26 acres owned by the Lessor herein distant 524.06 feet South of the intersection of said West line with the Southwest line of Navigation and Floodway Channel, thence along the West line of said larger track South 0 degrees 20 minutes 27 seconds West 230 feet to its intersection with Toe of Levee; thence along the Toe of the Levee 325 feet to a point; thence South 89 degrees 39 minutes 33 seconds East 565 feet more or less to the Southwest line of said Navigation and Floodway Channel; thence Northwesterly along said Channel line to its intersection with a line drawn South 89 degrees 39 minutes 33 seconds East from the point of beginning; and thence North 89 degrees 39 minutes 33 seconds West 475 feet more or less to the point of beginning, and containing 6 acres more or less; and,

Whereas, MAX MOCK and HARVEY ARRINGTON have heretofore on the 6th day of September, 1968, entered into that certain Dissolution of Partnership wherein, inter alia, the partnership, operating under the firm name of Harvey's Fish Camp, was terminated and dissolved and fully wound up in the manner therein set forth; and,

Whereas, said Dissolution of Partnership provided that HARVEY ARRINGTON should retain all assets of the partnership, including any interests the partnership has or may have in and to any leases or other interests in real

property, and it is the desire of Assignors herein to assign to Assignee herein any right, title or interest they have or may have had in and to that certain Lease, No. 1598, from TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA to MAX MOCK and HARVEY ARRINGTON, and said assignee desires to accept the same,

Now, Therefore, for and in consideration of the sum of $1.00 and other good and valuable considerations, as is more fully set forth in that certain Dissolution of Partnership dated the 6th day of September, 1968, MAX MOCK and GENEVA MOCK, his wife, have granted, bargained, sold, assigned, transferred and set and delivered over and conveyed, and by these presents do grant, bargin, sell, assign, transfer, and set and deliver over and convey unto HARVEY ARRINGTON, Route # 2, Moore Haven, Florida, all their right, title and interest in and to that certain Lease from the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, dated the 26th day of August A. D. 1961, under Lease No. 1598, to MAX MOCK and HARVEY ARRINGTON.

To have and to hold the said premises unto the Assignee herein, and his heirs and assigns.

And the Assignee, by signing these presents, does express his assent to this assignment, and accepts the provisions for him made herein.

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LEASE NO. 1627

LEASE OF SUBMERGED LAND FOR ERECTION OF RADIO TRANSMITTER TOWERS

This Agreement and Lease made and entered into this 21st day of September, 1961, by and between the State of Florida, by and through the Trustees of the Internal Improvement Fund of the State of Florida, hereinafter called the Lessors, and Sioux Broadcasting Corporation, a Florida corporation, with principal place of business in Miami, Dade County, Florida, hereinafter called the Lessee, WITNESSETH:

That the Lessors, for and in consideration of the mutual covenants and agreements hereinafter contained, do hereby lease to the Lessee named herein, for the purpose of erecting a radio transmitter with four antenna towers, appurtenant equipment and facilities for operation and maintenance of such transmitter for a period of five (5) years from and after the date hereof, a parcel of sovereignty submerged and tidal land or shoal in Township 55 South, Range 42 East, described as follows:

> Commencing, for a point of reference, at the Northwest corner of Section 9, Township 55 South, Range 42 East, as shown on plat of "Estate of James Deering, Key Biscayne, Dade County, Florida" as recorded in Plat Book 40 at page 39 of the public records of Dade County, Florida, and run thence Southerly along the West boundary of said Section 9, as shown on said plat, a distance of 4320.35 feet; thence deflect 88° 28′ 45″ left and run Easterly 620.46 feet to the center

of lantern base Cape Florida Lighthouse (old tower), as shown on said plat of Estate of James Deering, said point being a U. S. Coast & Geodetic Survey triangulation station bearing coordinates of X=777,934.43, Y=485,229.28 based on East Zone Florida State Coordinate System; thence run South 14° 16' 52.7" West 5599.06 feet for a POINT OF BEGINNING, the coordinates of said point being X=776,553.238; Y=479,803.252; thence run South 80° 04' 27" East 225 feet; thence deflect 90° right and run Southwesterly 650 feet; thence deflect 90° right and run Northwesterly 225 feet; thence deflect 90° right and run Northeasterly 650 feet to point of beginning; said parcel of land containing 3.36 acres more or less, all coordinates and bearings being based on East Zone Florida State Coordinates System.

upon the following terms and conditions:

(1) Lessee agrees to pay as rental for said land the sum of Fifty ($50.00) Dollars per acre per annum, or a total of One Hundred and Sixty-Eight ($168.00) Dollars per year for use of said lands.

(2) Lessee agrees and obligates itself to comply with all applicable regulations and requirements of the U. S. Army Corps of Engineers, Federal Communications Commission, Federal Aviation Administration and state and local regulations.

(3) Lessee agrees to construct a radio transmitter and tower or towers in a workmanlike manner and further agrees to maintain said tower at all times during the term of this lease.

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(4) Lessee agrees to save Lessors harmless from any liability to any third person or property which might result from the construction and operation by Lessee of the radio towers on the leased premises.

(5) Lessee agrees not to assign this agreement or lease or any of the rights granted hereunder without prior consent in writing of the Lessors.

(6) Lessee covenants and agrees that at the termination of this lease it will yield possession to Lessors and remove all installations which have been placed upon the leased premises.

(7) This lease does not cover petroleum or petroleum products and does not grant the right to Lessee to drill for or explore for the same.

(8) Should the Lessee breach any of the terms or covenants of this lease, including the payment of the annual rental herein provided, the Lessors may, at their option, give written notice to the Lessee to remedy such breach within ninety (90) days and in the event of failure by the Lessee to remedy the breach to the satisfaction of the Lessors or pay rental which may be delinquent, then this lease shall be void and of no further force and effect.

(9) All notices given to Lessee will be served by mailing the same to it at its address in Miami, Florida unless another address is designated in writing to the Lessors by the Lessee.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA

AGRICULTURAL LEASE

NO. 1766

THIS AGREEMENT AND LEASE made this 1st day of June, A.D. 1962, by and between the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, hereinafter called the "Lessors" and R. W. BISHOP, Clewiston, Florida, hereinafter called the "Lessee", WITNESSETH:

That the Lessors, for and in consideration of the sum of $500.00, the receipt whereof is hereby acknowledged, together with other payments to be made as hereinafter required, does hereby lease for agricultural purposes only to the Lessee for a period of twenty (20) years from June 1, 1962, the following described land in Palm Beach County, to-wit:

> That part of the North ¾ of Section 27, Township 44 South, Range 35 East, lying East of the right of way of Levee 25 (Miami Canal) less the North 130 feet and less the East 130 feet thereof which are designated by Central & Southern Florida Flood Control District for secondary channels, containing 231.4 acres, more or less.

upon the following terms and conditions:

(1) Lessee agrees and obligates himself to pay to the Lessors, payable semi-annually in advance, as and for

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rental for said land the sum of $2.00 per acre per year for the first two years; $4.00 per acre per year for the third, fourth and fifth years; $6.00 per acre per year for the sixth, seventh, eighth, ninth and tenth years; $8.00 per acre per year for the eleventh through fifteenth years, inclusive; and $10.00 per acre per year for the sixteenth through twentieth years inclusive. Should the Lessee fail to make the semi-annual payment of rentals on the due date, or within forty-five (45) days from the date thereof, such failure shall constitute a default by the Lessee and the Lessors may, at their option, immediately terminate this lease. Any extension of time for payment of rental beyond the forty-five (45) day grace period must be authorized by Lessors and penalty interest shall be charged at the rate of one per cent per month on the amount of the delinquent rental beginning with the first day following the expiration of the forty-five (45) day grace period.

(2) Lessee shall have the right to construct, install and maintain works for reclamation or desirable for agricultural use of the premises. Also, the right to construct and maintain any and all roads which may be required for the proper agricultural use of said premises.

(3) This lease does not cover petroleum or petroleum products or minerals and does not give the right to Lessee to drill or develop the same.

(4) The Trustees of the Internal Improvement Fund and their duly authorized representatives shall have the right at all times to inspect the premises and works of the Lessee.

(5) This lease shall not be assigned wholly or in part, or subleased wholly or in part without formal approval of the assignment or sublease, including all terms of the same, by the Trustees of the Internal Improvement Fund. The Lessors reserve the right to require assignee or sublessee to furnish financial statement and surety bond equivalent to bond of Lessee named herein before assignment or sublease is approved and become legally effective.

(6) Lessee agrees that it will not do or suffer any act which will result in damage to the leased premises.

(7) It is agreed and covenanted that the removable improvements placed on the premises by the Lessee which do not become a part of the realty will remain in the property of the Lessee and may be removed by Lessee upon termination of the lease, provided all sums due Lessors as rental for the premises are paid; otherwise, such equipment and improvements shall be and remain subject to lien for the sums due the Lessors.

(8) The Lessee shall be responsible to the Lessors for the reasonable protection of said premises against fire and damage therefrom.

(9) It is expressly agreed and understood that the Lessors assume no liability or obligation to the Lessee, its agents and tenants, with reference to the condition of the lands and water levels at any time.

(10) The Lessee agrees to maintain any and all existing canals, drainage facilities and the like in as good condition as the same may be at the date of this lease,

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ordinary wear and tear expected, and Lessee further agrees to pay any and all drainage or special assessments or taxes of every sort and description which are now or may be hereafter lawfully assessed against the leased premises.

(11) Lessee agrees that it will not cause or allow damage to the leased premises and no soil, sod, muck or other materials shall be removed from the leased premises.

(12) Lessee agrees that all permanent type improvements placed in or on the premises by the Lessee shall become a part and parcel of the realty and vest in the Lessors upon termination of the lease.

(13) It is agreed that failure to make payments of the rentals herein agreed to be paid or breach of any covenant of this lease will constitute default and the leased premises and all appurtenances related to or connected with the land shall revert to and vest in the Lessors. A resolution of the Lessors reciting notice of default or breach will be sufficient to effectuate and evidence such reversion and terminate the lease, except as otherwise provided by paragraphs (1) and (19) of the lease.

(14) The Lessee covenants and agrees to expend in improvements upon the leased premises within the first three years of the lease a sum equal to $8,000.00 and shall file satisfactory evidence that such improvements and expenditures have been made. It is agreed and understood that improvements which qualify under the terms of this agreement constitute such things as clearing and drainage of the land by the Lessee or contracted by the Lessee

at rates which prevail for such work in the zone. Construction of roads for access to the lands will be considered as constituting an improvement o fthe land in accordance with this provision of the lease.

(15) It is agreed and understood by the parties hereto that this is not a renewable lease and that upon the expiration of the period of twenty (20) years provided herein the leased premises will then be offered for open competitive bids for sale or lease as in the judgment of the Lessors is deemed most favorable and in the best interest of the Lessors at that time.

(16) It is mutually agreed that the estimated acreage as shown herein has been accepted by the parties hereto for the purpose of calculating rentals due under the provisions of this lease.

(17) The Lessee agrees to comply with all lawful requirements, rules, regulations, laws and ordinances of any legally constituted authority which in any way affect the leased premises.

(18) All notices given to the Lessee may be served by mailing the same to it at Clewiston, Florida, unless another address is designated in writing by the Lessee to the Lessors.

(19) Should the Lessee breach any of the covenants, terms or conditions of this lease, other than the payment of rent, the Lessors may, at their option, give written notice to the Lessee to remedy such breach within ninety (90) days or in the event of failure by the Lessee to so remedy the breach to the satisfaction of the Lessors, this lease shall be void and of no further force and effect.

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TRUSTEES OF THE INTERNAL IMPROVEMENT FUND AND STATE BOARD OF EDUCATION OF FLORIDA

AGRICULTURAL LEASE

No. 1824-1824-S

THIS AGREEMENT AND LEASE made this 26 day of October A.D. 1962, by and between the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA and the STATE BOARD OF EDUCATION OF FLORIDA, hereinafter called the "Lessors" and J. W. BROWN of Pahokee, Florida, hereinafter called the "Lessee", WITNESSETH:

That the Lessors, for and in consideration of the sum of $632.61, the receipt whereof is hereby acknowledged, together with other payments to be made as hereinafter required, does hereby lease for agricultural purposes only to the said Lessee for a period of ten (10) years from the date of execution of this lease the following described land in Palm Beach County owned by the respective governmental agencies, more particularly described as follows:

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND LAND:

That part of the West Half of Section 9, Township 45 South, Range 35 East lying West of West right of way line of Miami Canal, comprising 308.53 acres, more or less;

STATE BOARD OF EDUCATION LAND:

That part of Section 16, Township 45 South, Range 35 East, less South 200 feet (Railroad right of way) lying West of West right of way line of Miami Canal, comprising 324.08 acres, more or less;

comprising a grand total of 632.61 acres, more or less, upon the following terms and conditions:

(1) Lessee agrees and obligates himself to pay to the Lessors, annually in advance, as and for rental for said land the sum of One Dollar ($1.00) per acre per year. Should the Lessee fail to make the annual payment or rental on or by the due date, or within forty-five (45) days from and after the date thereof, such failure shall constitute a default by the Lessee and the Lessors may, at their option, immediately terminate this lease. Any extension of time for payment of rental beyond the forty-five (45) day grace period must be authorized by Lessors with penalty interest charged at the rate of one per cent (1%) per month or fraction thereof on the amount of the delinquent rental beginning with the first day following the expiration of the forty-five (45) day grace period.

(2) Lessee shall have the right to construct, install and maintain works for reclamation or desirable for agricultural use of the premises. Also the right to construct and maintain any and all roads which may be required for the proper agricultural use of said premises.

(3) This lease does not cover petroleum or petroleum products or minerals and does not give the right to Lessee to drill or develop the same.

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(4) The Trustees of the Internal Improvement Fund and the State Board of Education and their duly authorized representatives shall have the right at all times to inspect the premises and works of the Lessee.

(5) This lease shall not be assigned wholly or in part, or subleased wholly or in part without formal approval of the assignment or sublease, including all terms of the same, by the Trustees of the Internal Improvement Fund. The Lessors reserve the right to require assignee or sublessee to furnish financial statement and surety bond equivalent to bond of Lessee named herein before assignment or sublease is approved and become legally effective.

(6) Lessee agrees that it will not do or suffer any act which will result in damage to the leased premises.

(7) It is agreed and covenanted that the removable improvements placed on the premises by the Lessee which do not become a part of the realty will remain the property of the Lessee and may be removed by Lessee upon termination of the lease, provided all sums due Lessors as rental for the premises are paid; otherwise, such equipment and improvements shall be and remain subject to lien for the sums due the Lessors.

(8) The Lessee shall be responsible to the Lessors for the reasonable protection of said premises against fire and damage therefrom.

(9) It is expressly agreed and understood that the Lessors assume no liability or obligation to the Lessee, its agents and tenants, with reference to the condition of the lands and water levels at any time.

(10) The Lessee agrees to maintain any and all existing canals, drainage facilities and the like in as good condition as the same may be at the date of this lease, ordinary wear and tear expected, and Lessee further agrees to pay any and all drainage or special assessments or taxes of every sort and description which are now or may be hereafter lawfully assessed against the leased premises.

(11) Lessee agrees that it will not cause or allow damage to the leased premises and no soil, sod, muck or other materials shall be removed from the leased premises.

(12) Lessee agrees that all permanent type improvements placed in or on the premises by the Lessee shall become a part and parcel of the realty and vest in the Lessors upon termination of the lease.

(13) It is agreed that failure to make payments of the rentals herein agreed to be paid or breach of any covenant of this lease will constitute default and the leased premises and all appurtenances related to or connected with the land shall revert to and vest in the Lessors. A resolution of the Lessors reciting notice of default or breach will be sufficient to effectuate and evidence such reversion and terminate the lease, except as otherwise provided by paragraphs (1) and (19) of the lease.

(14) The Lessee covenants and agrees to expend in improvements upon said leased premises within the first three (3) years of lease a sum equal to $60,000.00 and shall file satisfactory evidence that such improvements and expenditures have been made. It is agreed and understood that improvements which qualify under the terms of this agreement constitute such things as clearing and drainage

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of the land by the Lessee or contracted by the Lessee at rates which prevail for such work in the zone. Construction of roads for access to the lands will also be considered as constituting an improvement of the land in accordance with this provision of the lease.

(15) It is agreed and understood by the parties hereto that extension or renewal of this lease will be based on negotiation after appraisal has been made of the land.

(16) It is mutually agreed that the estimated acreage as herein provided has been accepted by both parties for the purpose of calculating rentals due, provided, however, the Lessee may at his own expense furnish a survey by a registered land surveyor who is satisfactory to the Lessor, showing the acreage as calculated from said actual survey and said surveyed acreage shall thereafter fix the liability of the Lessee for the payment of future rentals beginning with the next succeeding annual installment of rent herein provided.

(17) The Lessee agrees to comply with all lawful requirements, rules, regulations, laws and ordinances of any legally constituted authority which in any way affect the leased premises.

(18) All notices given to the Lessee may be served by mailing the same to him at P.O. Box 1378, Pahokee, Florida, unless another address is designated in writing by the Lessee to the Lessors.

(19) Should the Lessee breach any of the covenants, terms or conditions of this lease, other than the payment of rent, the Lessors may, at their option, give written

notice to the Lessee to remedy such breach within ninety (90) days or in the event of failure by the Lessee to so remedy the breach to the satisfaction of the Lessors, this lease shall be void and of no further force and effect.

TRUSTEES OF THE
INTERNAL IMPROVEMENT FUND AND
STATE BOARD OF EDUCATION OF FLORIDA

EXTENSION OF AGRICULTURAL LEASE

WHEREAS, the Trustees of the Internal Improvement Fund and the State Board of Education of Florida, hereinafter called the "Lessors," did, on October 26, 1962, grant to one J. W. Brown, of Pahokee, Florida, an agricultural lease for a period of ten (10) years from said date, to the following described land in Palm Beach County, Florida, owned by the respective governmental agencies, to wit:

TRUSTEES OF THE INTERNAL
IMPROVEMENT FUND LAND:

That part of the West Half of Section 9, Township 45 South, Range 35 East lying West of West right of way line of Miami Canal, comprising 308.53 acres, more or less;

STATE BOARD OF EDUCATION LAND:

That part of Section 16, Township 45 South, Range 35 East, less South 200 feet (Railroad right of way) lying West of West right of way line of Miami Canal, comprising 324.08 acres, more or less;

Comprising a grand total of 632.61 acres, more or less, and

WHEREAS, the above described lease was duly assigned to Brown Sugar Corporation, a Florida corporation, by J. W. Brown, lessee named in said lease, on the 16th day of August, 1963, which assignment was approved by "Lessors" by official action August 20, 1963, and

WHEREAS, the assignee of this lease, Brown Sugar Corporation, submitted a proposal for a ten year extension of subject lease upon same terms and conditions, except rental payments which would be $20.00 per acre per year for the 11th through the 15th years of the lease as extended and $30.00 per acre per year for the 16th through the 20th years of the lease as extended, and

WHEREAS, the Trustees of the Internal Improvement Fund and the State Board of Education of Florida, did consider this proposal for extension of this lease at their meeting held on December 10, 1963, and upon due consideration it was deemed to be in the best interest of the State to approve this proposal and both agencies formally agreed to execute appropriate instrument extending said lease upon rental terms set forth herein for the ten (10) year extension, NOW, THEREFORE,

THIS INDENTURE made and entered into this 16th day of January, A.D. 1964, by and between the Trustees of the Internal Improvement Fund of the State of Florida and the State Board of Education of Florida, hereinafter called the "Lessors", and Brown Sugar Corporation, a Florida corporation, with its principal place of business in Pahokee, Florida, hereinafter called the "Lessee", WITNESSETH:

That the "Lessors", for and in consideration of additional rentals agreed to be paid by "Lessee", as hereinafter set forth and the covenants and agreements to be kept and performed, each to the other, do hereby extend the lease for agricultural purposes only heretofore granted to J. W. Brown on October 26, 1962, but which is now held by Brown Sugar Corporation, "Lessee" named herein, by valid assignment, for a period of ten (10) years from and after the 26th day of October, 1972, upon the following terms and conditions:

1. "Lessee" agrees and obligates itself to pay to the "Lessors", annually in advance, as and for rental for said land heretofore described the sum of Twenty ($20.00) Dollars per acre per year for the 11th through the 15th years of said lease as herein extended and Thirty ($30.00) Dollars per acre per year for the 16th through the 20th years of said lease as herein extended.

2. It is covenanted and agrees that all applicable terms and conditions set forth in the original lease shall be considered as a part of this extension agreement with the exception of item numbered (15), which is hereby cancelled and henceforth shall be considered by the parties hereto as of no effect.

ASSIGNMENT OF LEASE

THIS INDENTURE made and entered into this 16th day of August A.D. 1963, by and between J. W. BROWN of Pahokee, Florida, party of the first part and BROWN SUGAR CORP., a Florida corporation with its principal place of business in Pahokee State of Florida, party of the second part.

WITNESSETH: That for and in consideration of the sum of One Dollar and other good and valuable considerations paid by the party of the second part, the receipt whereof is hereby acknowledged, the party of the first part does hereby assign to the party of the second part, its successors and assigns, all of his right, title and interest in and to that certain Agricultural Lease No. 1824-1824-S, dated October 26, 1962, between the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA and STATE BOARD OF EDUCATION OF FLORIDA as Lessors and J. W. BROWN as Lessee, on the following described property, lying, being and situate in the County of Palm Beach, State of Florida, to-wit:

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND LAND:

That part of the West Half of Section 9, Township 45 South, Range 35 East lying West of West right of way line of Miami Canal, comprising 308.53 acres, more or less;

STATE BOARD OF EDUCATION LAND:

That part of Section 16, Township 45 South, Range 35 East, less South 200 feet (Railroad right of way) lying West of West right of way line of Miami Canal, comprising 324.08 acres, more or less;

Comprising a grand total of 632.61 acres, more or less.

The party of the second part hereby agrees that it accepts all of the terms and conditions of the above de-described lease and agrees to carry out the same as though it had been named as Lessee in the original lease instead of J. W. Brown.

LEASE AGREEMENT

NO. 1921

THIS LEASE AGREEMENT, Made and entered into this 18th day of June, A.D., 1963, by and between TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, hereinafter referred to as LESSOR, and the AMERICAN TELEPHONE AND TELEGRAPH COMPANY, a New York corporation, authorized to do business in the State of Florida, hereinafter referred to as LESSEE, and the CENTRAL AND SOUTHERN FLORIDA FLOOD CONTROL DISTRICT, a public corporation, hereinafter referred to as DISTRICT.

WITNESSETH:

LESSOR, in consideration of the mutual covenants contained herein and the agreements of LESSEE to be kept, performed and fulfilled, and in the public interest, and for the sum of Five Hundred and Seven ($507) Dollars, paid in hand by LESSEE to the LESSOR, receipt of which is hereby acknowledged, and for other good and valid considerations, hereby leases to LESSEE the following described premises lying, being and situate in the County of Broward, Florida, to-wit:

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TRACT ONE:

A parcel of land in Section 2, Township 48 South, Range 38 East, Broward County, Florida, described as follows: Commencing at the Northwest corner of said Section 2; thence, North 89°36′44″ East along the North line of said Section 2, 2611.6 feet to a point on the Westerly right of way line of U. S. Highway No. 27 (State Road No. 25); thence, South 35°30′44″ East along the said Westerly right of way line, 468.89 feet to a point; thence, South 54°29′16″ West, 401.0 feet to the point of beginning of this description; thence, continue South 54°29′16″ West, 470 feet to a point; thence, South 35°30′44″ East, 470 feet to a point; thence, North 54°29′16″ East, 470 feet to a point; thence, North 35°30′44″ West, 470 feet to the point of beginning, containing 5.07 acres of land.

and,

TRACT TWO:

Beginning at the point of beginning of the above described parcel; thence, South 35°30′44″ East, 150 feet to the point of beginning of this description; thence, continue South 35°30′44″ East, 40 feet to a point; thence, North 54°29′16″ East, 401 feet to a point on the Westerly right of way line of U. S. Highway No. 27 (State Road No. 25); thence, North 35°30′44″ West along the said Westerly right of way line, 40 feet to a point; thence, South 54°29′16″ West, 401 feet to the point of beginning, containing 0.37 acres of land.

Said premises being subject to the following described easement now held by DISTRICT to-wit: Surface Easement No. 19554, issued January 17, 1950, by the Trustees of the Internal Improvement Fund of the State of Florida to the Central and Southern Florida Flood Control District, said easement deed being recorded in Deed Book 681 at page 476 of the public records of Broward County, Florida, on February 6, 1950.

TO HAVE AND TO HOLD the above described premises, subject to such rights, privileges, easements and appurtenances as are hereinabove and hereinafter set forth, for the term of ninety-nine (99) years from and after the date as first above set forth, LESSEE yielding possession thereof to LESSOR at the expiration of said ninety-nine (99) year period.

Each of the parties hereto mutually agree that the sole purpose for which this lease is granted is to provide a Radio Relay Site (Tract One), and access way (Tract Two) thereto, as a part of the Clark's Hill-Miami Radio Relay Project and appropriate and related facilities in conjunction therewith for the benefit of LESSEE, and in the event the use of the subject real property solely for the above stated purpose is discontinued for a period of one year, or LESSEE abandons said purpose, this agreement shall thereupon become null and void and any right, title or interest granted to LESSEE herein shall thereupon immediately cease and shall revert to the LESSOR and said LESSOR shall have an immediate right of re-entry and possession of said real property, and LESSEE shall have three months thereafter in which to enter upon said real property and remove therefrom the facilities it may have installed thereon.

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The DISTRICT, for and in consideration of the premises, and for the further sum of Ten Dollars ($10.00), paid in hand by the LESSEE, receipt of which is hereby acknowledged, agrees to and by these presents does hereby subordinate its easement rights and privileges as contained in the above-described easement deed from the Trustees of the Internal Improvement Fund to said DISTRICT, said subordination being limited to the sole purpose for which this lease is granted and subject to the conditions stated hereinabove and as follows:

1. The LESSEE shall bear all responsibility for any and all construction and maintenance of a road upon said access way (Tract Two) as hereinabove described and said LESSEE shall bear any and all costs incident thereto.

2. The DISTRICT in its overall project of flood control for southern and central Florida has designated the portion of its said project pertaining to the hereinabove described real property (Tracts One and Two) and lands contiguous thereto as Levee 38 (Sec. 1) West, and the DISTRICT reserves the right to construct such canal, levee, borrow canal or other work across the above-described access way (Tract Two) as the DISTRICT may deem necessary in connection with its flood control program, and in the event the DISTRICT should construct such facility, the LESSEE agrees to alter its way of access across the hereinabove described access way (Tract Two) in such a manner as to conform with DISTRICT requirements and to prevent any and all interference with maintenance and function of project of the DISTRICT: and the LESSEE further agrees to construct and maintain such bridges, ramps, culverts, crossing or structure as may be necessary to provide vertical and horizontal clearances and desired

maintenance and functioning, as may be required by said DISTRICT, for its said canals, levees, borrow canals, or other structures across the aforesaid access way (Tract Two), insofar as LESSEE'S access way crosses said DISTRICT works.

3. The LESSEE may provide such fencing of the area of this lease (Tracts One and Two) as LESSEE may determine, provided that fencing of the access way (Tract Two) does not interfere with the maintenance and function of any of said DISTRICT'S works as herein described; however, LESSEE shall provide a locked gate across said access way at a point on the easterly portion of said access way as near as possible to U. S. Highway No. 27 (State Road 25), and LESSEE shall provide the DISTRICT with duplicate keys to any such gate or gates, or entrances, in order to provide and insure said DISTRICT with free access to its said works and projects for purposes of construction or maintenance thereof.

Any fencing and/or gates along said access way shall be subject to such relocation as shall be necessitated by future requirements of the DISTRICT with reference to its said project on the hereinabove described access way.

4. LESSEE shall apply for and receive a Permit from the DISTRICT for any and all works which may be constructed by LESSEE along the hereinabove described access way (Tract Two).

5. This Agreement shall be binding on each of the parties hereto, their successors and assigns.

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TRUSTEES OF INTERNAL IMPROVEMENT FUND
OF THE STATE OF FLORIDA

No. 1010

THIS INDENTURE OF LEASE, made this 19th, day of August, A. D. 1955, by and between the Trustees of the Internal Improvement Fund of the State of Florida, hereinafter referred to as Lessors, and Indian River Broadcasting Company, a corporation duly authorized to do business in Florida, hereinafter referred to as Lessee,

WITNESSETH:

That for and in consideration of the payment of the moneys and the performance of the covenants contained herein on the part of the Lessee, Lessors do hereby demise, grant, lease and let exclusively unto Lessee, the following described property situate lying and being in St. Lucie County, Florida:

Beginning at the point of intersection of the face of existing concrete seawall on the westerly shore of Indian River and the easterly extension of the south line of Block 7 of RIVERSIDE ADDITION, as per plat thereof recorded in Plat Book 3, Page 51, St. Lucie County, Florida, Public Records, said point being 385.44 feet easterly from the southwest corner of said Block 7; run thence North 5° 08′ West, along face of said existing seawall and the westerly shore of Indian River, 197.5 feet; thence North 81° 13′ East, 50 feet; thence North 60° 00′ East, 705 feet; thence South 30° 60′ East, 270 feet; thence South 60° 00′ West, 645 feet; thence South 81° 13′ West, 255 feet,

more or less, to the Point of Beginning, the same being a tract of submerged land lying easterly from the west shore of Indian River in Government Lots 3 and 4, Section 10, Township 35 South, Range 40 East, and containing 4.9 acres, more or less.

TO HAVE AND TO HOLD the above described land unto the said Lessee for a period of fifteen years (15) from the date of this lease, subject to the following terms and conditions:

1. For and in consideration of this lease, Lessee agrees to pay to the Lessors at Tallahassee, Florida, or to their lawful authorized agents, and annual rental of One Hundred Fifty and 00/100 Dollars ($150.00) payable in advance, the first installment of which is paid at the date of execution of this instrument, receipt of which is hereby acknowledged, the remaining fourteen installments to be paid on this same date in each of the fourteen succeeding years, the total of said payments to constitute the full rental price of the above described premises for the period herein specified, unless it should be necessary to collect said amount by legal proceedings, in which event the Lessee agrees to pay a reasonable Attorney's fees and all costs of Court for such collection.

2. That this lease shall be restricted to the construction, erection, maintenance, operation, repair and enlargement of a radio tower or antenna, together with appurtenances and appliances necessary thereto, the sustaining guy wires and the anchorages thereof, a catwalk extending from said sea wall to said tower or antenna, and a platform or foundation to support the tower.

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3. That Lessee, at the expiration of this lease, shall have the right to remove all improvements, appliances, equipment or installations of any description constructed, placed, stored or brought on said premises by Lessee at any time prior to the termination of this lease, provided all rents shall have been paid previous to such removal.

4. The Lessee hereby agress for itself, its successors and assigns, that the Lessors shall have a lien as security for the rental aforesaid upon all goods and chattels of whatsoever kind constructed, built, placed, stored or brought upon said premises by Lessee and in whatever condition said goods or chattels may be, and such lien may be enforced on the non-payment of the rent of any of the aforesaid, by the taking and sale of such property in the same manner as in the cases of Chattel Mortgages on default thereof, or by distress warrant as provided by law.

5. The Lessee will not, without the previous license in writing of the Lessors or their successors in office, which license shall not be unreasonably withheld, assign, underlet, or part with the possession or control of the said premises or any part thereof.

6. The Lessee will not do or suffer to be done in or upon the said premises any act which shall or may be a nuisance, annoyance, inconvenience or damage to the Lessors or their successors in office or to residents of the neighborhood or to owners of lands adjacent thereto; provided, however, the blanketing of radio reception in the neighborhood of the demised premises shall not be deemed to be a violation of the provisions of this paragraph.

7. That Lessee in accepting this lease agrees that no claim shall emanate from its occupancy or use of the lands or from any buildings or improvements which it may place thereon, or from anything growing out of this lease and acknowledges that it has no claim of any description upon said land.

8. That Lessee shall be responsible for the protection of said lands against fire.

9. That Lessee agrees it may not construct any ditch, levee or other works affecting said lands without first having received permission in writing from Lessors so to do.

10. That automatically upon termination of this lease, all rights of Lessee to the said lands and improvements thereon, except as provided by paragraph three hereof, shall terminate as to the said Lessee and revert to the Lessors and the Lessee agrees to vacate the said lands by the expiration date of this lease.

11. Upon the neglect or failure of the Lessee to fully perform and observe, in the time prescribed and in the manner provided, each and every of the terms, conditions, reservations and restrictions required of said Lessee by this agreement, then and in that event this agreement shall be null and void and all rights of said Lessee or any other person or persons claiming rights under said Lease shall cease and the estate herein conveyed shall immediately thereupon revert to the Lessors or their successors in office, and a resolution of said Lessors or their successors in office shall be sufficient evidence of such reversion.

AGRICULTURAL LEASE

LEASE NO. 1935 & 1935-S

THIS AGREEMENT AND LEASE made this 26th day of August 1963, by and between the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA and the STATE BOARD OF EDUCATION OF THE STATE OF FLORIDA, component governmental agencies, hereinafter called the "Lessors" and A. DUDA & SONS, INC., a Florida corporation, its successors and assigns, with its principal place of business in Ovieda, Florida, hereinafter called the "Lessee", WITNESSETH:

That the Lessors, for and in consideration of the sum of $22,484.55, being rental paid in advance for the first two years of this lease, do hereby lease for agricultural purposes only to the said Lessee for a period of fifteen (15) years from the date of execution of this lease, with option to the Lessee to extend said fifteen year lease for an additional five (5) years as hereinafter provided in paragraph (15), the following land in Palm Beach County, Florida owned by the respective governmental agencies as follows:

TRUSTEES OF INTERNAL IMPROVEMENT FUND LAND:

All of Sections 1, 12 and 13 in Township 45 South, Range 37 East and Section 18 in Township 45 South, Range 38 East; 2,562.91 acres, more or less.

STATE BOARD OF EDUCATION LAND:

All of Sections 6, 7, 8, 16 and 17, Township 45 South, Range 38 East; 3,202.36 acres, more or less.

upon the following terms and conditions:

(1) Lessee agrees and obligates itself to pay to the respective governmental agencies, payable semi-annually in advance, as and for rental for said land the sum of $3.90 per acre per year for the first and second years; $6.50 per acre per year for the third and fourth years; $9.10 per acre per year for the fifth and sixth years; $11.70 per acre per year for the seventh and eighth years; $12.925 per acre per year for the ninth and tenth years; $17.55 per acre per year for the eleventh through fifteenth years. In the event Lessee exercises the option granted herein to extend this lease for an additional period of five (5) years the rental for the additional five year period shall be $20.80 per acre per year payable semi-annually in advance as provided herein for the primary term. The sum of $10,000.00 heretofore paid by the Lessee shall be credited to the account of the first two years rental period of said lease and the Lessee agrees to pay any remaining balance calculated upon the rental heretofore set forth. Should the Lessee fail to make the semi-annual payment of rentals on the due date, or within forty-five (45) days from the date thereof, such failure shall constitute a default by the Lessee and the Lessors may, at their option, immediately terminate this lease. Any extension of time for payment of rental beyond the forty-five (45) day grace period must be authorized by Lessors and penalty interest shall be charged at the rate of one per cent per month on the amount of the delinquent rental beginning with the first day following the expiration of the forty-five (45) day grace period.

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(2) Lessee shall have the right to construct, install and maintain works for reclamation or desirable for agricultural use of the premises. Also, the right to construct and maintain any and all roads which may be required for the proper agricultural use of said premises.

(3) This lease does not cover petroleum or petroleum products or minerals and does not give the right to Lessee to drill for or develop the same.

(4) The Board of Education and the Trustees of the Internal Improvement Fund and their duly authorized representatives shall have the right at all time to inspect the premises and works of the Lessee.

(5) This lease shall not be assigned wholly or in part, or the lands described herein subleased wholly or in part without formal approval of the assignment of sublease, including all terms of the same, by the Board of Education and the Trustees of the Internal Improvement Fund. The Lessors reserve the right to require assignee or sublessee to furnish financial statement and surety bond before assignment or sublease is approved and becomes legally effective.

(6) Lessee agrees that it will not do or suffer any act which will result in damage to the leased premises.

(7) It is agreed and covenanted that the removable improvements placed on the premises by the Lessees which do not become a part of the realty will remain the property of the Lessees and may be removed by Lessees upon termination of the lease, provided all sums due Lessors as rental for the premises are paid; otherwise, such equipment and improvements shall be and remain subject to lien for the sums due the Lessors.

(8) The Lessee shall be responsible to the Lessors for the reasonable protection of said premises against fire and damage therefrom.

(9) It is expressly agreed and understood that the Lessors assume no liability or obligation to the Lessee, its agents and tenants, with reference to the condition of the lands and water levels at any time.

(10) The Lessee agrees to maintain any and all existing canals, drainage facilities and the like in as good condition as the same may be at the date of this lease, ordinary wear and tear excepted, and Lessee further agrees to pay any and all drainage or special assessments or taxes of every sort and description which are now or may be hereafter lawfully assessed and levied against the leased premises.

(11) Lessee agrees that it will not cause or allow damage to the leased premises and no soil, sod, muck or other materials shall be removed from the leased premises.

(12) Lessee agrees that all permanent type improvements placed in or on the premises by the Lessee shall become a part and parcel of the realty and vest in the Lessors upon termination of the lease.

(13) It is agreed that failure to make payments of the rentals herein agreed to be paid as and when said rentals are due and payable or breach of any covenant of this lease will constitute default and the leased premises and all appurtenances related to or connected with the land shall revert to and vest in the Lessors. A resolution of the Lessors reciting notice of default or breach will be suffi-

cient to effectuate and evidence such reversion and terminate the lease, except as otherwise provided by Paragraphs (1) and (18) of the lease.

(14) The Lessee covenants and agrees to expend the sum of $35,000.00 each year for the first three years in improvements upon the leased premises and shall file, on or before the end of each year, satisfactory evidence that such improvements and expenditures have been made. It is agreed and understood that improvements which qualify under the terms of this agreement constitute such things as clearing and drainage of the land by the Lessee or contracted by the Lessee at rates which prevail for such work in the zone. Construction of roads for access to the lands will also be considered as constituting an improvement of the land in accordance with this provision of the lease.

(15) In the event Lessee wishes to exercise its option to extend said lease for an additional five (5) years, notice in writing shall be filed with Lessor on or before six (6) months prior to termination of the fifteenth year of lease.

(16) The Lessee agrees to comply with all lawful requirements, rules, regulations, laws and ordinances of any legally constituted authority which in any way affect the leased premises.

(17) All notices given to the Lessee may be served by mailing the same to Ovieda, Florida, unless another address is designated in writing by the Lessee to the Lessors.

(18) Should the Lessee breach any of the covenants, terms or conditions of this lease, other than the payment of rent, the Lessors may at their option, give written notice to the Lessees to remedy such breach within ninety (90) days and in the event of failure by the Lessee to so remedy the breach to the satisfaction of the Lessors, this lease shall be void and of no further force and effect.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA

LEASE

NO. 1950

THIS LEASE made and entered into on this 5th day of November, A. D., 1963 by and between the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, as Lessors, and BLUE CRYSTAL BROADCASTING CORPORATION, a corporation organized and existing under the laws of the State of Florida having its principal place of business at 1004 — 20th Place, Vero Beach, Florida, as the Lessee.

WITNESSETH: That the Lessors, for and in consideration of the mutual agreements and covenants hereinafter set forth and in pursuance of authorization by said Lessors in meeting October 22, 1963, do, by these presents, hereby lease unto the Lessee hereinabove named, subject to the provisions and conditions hereinafter set forth, the following described land, in Brevard County, Florida, to-wit:

A parcel of submerged land in the Indian River in Section 34, Township 24 South, Range 36 East,

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described as Commencing, for purposes of reference, at the Northeast Corner of the NW¼ of Section 35, Township 24 South, Range 36 East, and run South 0° 20′ West, 1588.97 feet to the centerline of State Road 520; thence South 89° 22′ 30″ West, 1958.97 feet along the centerline of State Road 520 to the centerline of Gable Street; thence Northerly along the centerline of Gable Street, 504.71 feet to the Northerly line of Orange Avenue; thence Westerly along the Northerly line of Orange Avenue, 280.9 feet; thence North 230 feet; thence West 102.12 feet; thence North 14° 40′ West, 86.93 feet; thence South 88° 20′ West, 410 feet, more or less, to the Easterly shore line of Indian River for POINT OF BEGINNING; thence run South 88° 20′ West, 640 feet; thence South 300 feet, more or less, to a point West 410 feet, more or less, from the Southeasterly corner of an existing bulkhead; thence East 410 feet, more or less, to said bulkhead; thence Northerly along said bulkhead 50 feet, more or less, to its Northeasterly corner; thence Northerly along the Easterly shore line of Indian River 195 feet, more or less, to the Northerly face of an existing bulkhead; thence Easterly along said Northerly face of said bulkhead 125 feet, more or less, to its Easterly terminus; thence Northeasterly along the shoreline of Indian River 135 feet, more or less, to Point of Beginning,

as and for site for a radio transmission tower and associated radial ground network.

THIS LEASE is made subject to the following provisions and conditions, viz:

1. This Lease is made for a term of ten (10) years from the date hereof.

2. Lessee agrees to pay as rental for said land the sum of One Hundred twenty dollars ($120.00), per annum.

3. Lessee agrees and obligates itself to comply with all applicable regulations and requirements of the U. S. Army Corps of Engineers, Federal Communications Commission, Federal Aviation Administration and State and local regulations in the construction, maintenance and operations conducted upon said land.

4. Lessee agrees to save the Lessors harmless from damages or claims arising out of Lessee's exercise of rights granted by this lease.

5. Lessee agrees not to assign this lease or any rights granted hereunder without prior consent in writing of the Lessors.

6. Lessee covenants and agrees that it will, at the termination of this lease, yield possession to Lessors and remove from the leased premises all installations placed thereon by the Lessee.

7. This lease does not cover oil, gas or minerals and does not grant any right to the Lessee to drill for or explore for the same.

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8. All notices given to Lessee will be served by mailing the same to its address in Vero Beach, Florida unless another address is designated in writing to the Lessors by the Lessee.

ASSIGNMENT OF LEASE

BLUE CRYSTAL BROADCASTING CORP., as Assignor, for and in consideration of the sum of TEN ($10.00) DOLLARS and other valuable considerations to it in hand paid by ASTRO ENTERPRISES, INC., has sold, and by these presents does grant, convey, sell, assign, transfer and set over to ASTRO ENTERPRISES, INC., a certain lease dated November 5, 1963, made and executed by the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, as Lessor and the above named BLUE CRYSTAL BROADCASTING CORP., as Lessee, of certain premises therein described:

A parcel of submerged land in the Indian River in Section 34, Township 24 South, Range 36 East, described as commencing, for purposes of reference, at the Northeast corner of the NW¼ of Section 35, Township 24 South, Range 36 East, and run South 0° 20′ West, 1588.97 feet to the centerline of State Road 520; thence South 89° 22′ 30″ West, 1958.97 feet along the centerline of State Road 520 to the centerline of Gable Street; thence Northerly along the centerline of Gable Street, 504.71 feet to the Northerly line of Orange Avenue; thence Westerly along the Northerly line of Orange Avenue, 280.9 feet; thence North 230 feet; thence West 102.12 feet; thence North 14° 40′ West, 86.93 feet; thence South 88° 20′ West,

410 feet, more or less, to the Easterly shore line of Indian River for POINT OF BEGINNING: thence run South 88° 20′ West, 640 feet; thence South 300 feet, more or less, to a point West 410 feet, more or less, from the Southeasterly corner of an existing bulkhead; thence East 410 feet, more or less, to said bulkhead; thence Northerly along said bulkhead 50 feet, more or less, to its northeasterly corner; thence Northerly along the Easterly shore line of Indian River 15 feet, more or less, to the Northerly face of an existing bulkhead; thence Easterly along said Northerly face of said bulkhead 125 feet, more or less, to its Easterly terminus; thence Northeasterly along the shoreline of Indian River 135 feet, more or less, to point of beginning,

as and for site for a radio transmission tower and associated radial ground network.

To have and to hold the same unto ASTRO ENTERPRISES, INC., its successors and assigns for and during all the rest, residue, and remainder of the term of the lease and the renewals thereof heretocome, as mentioned in the indenture of the lease.

ASTRO ENTERPRISES, INC., by accepting this assignment, shall assure and agree to perform all of the terms, covenants and conditions of the lease, on the part of the Lessee therein named to be performed. (May 12, 1966).

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TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA

AGRICULTURAL LEASE

LEASE NO. 2051

THIS AGREEMENT AND LEASE made this 1st day of October A.D. 1964, by and between the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, hereinafter called the "Lessor" and TALISMAN SUGAR CORPORATION, 1400 First National Bank Building, Miami, Florida hereinafter called the "Lessee", WITNESSETH:

That the Lessor, for and in consideration of the sum of $6,400.00 being rental paid in advance for the first two years of this lease, does hereby lease for agricultural purposes only to the said Lessee for a period of ten (10) years from the date of execution of this lease, with two (2) five (5) year renewal options as hereinafter provided in paragraph (15), the following land in Palm Beach County, Florida, as follows:

> All of Sections 24 and 36, Township 46 South, Range 35 East, containing 1,280.00 acres, more or less.

upon the following terms and conditions:

(1) Lessee agrees and obligates themselves to pay to the Lessor, payable semi-annually in advance, as and for rental for said land the sum of $2.50 per acre, per year, for the first and second years, $5.00 per acre, per

year, for the third and fourth years, $10.00 per acre, per year, for the fifth and sixth years, $25.00 per acre, per year, for the seventh and eighth years, and $25.75 per acre, per year, for the ninth and tenth years. Rentals for two five-year option renewal periods would be based on re-evaluation of the land during the tenth and fifteenth years of the lease, subject to approval of the Trustees. Should the Lessee fail to make the semi-annual payment of rental on the due date, or within forty-five (45) days from the date thereof, such failure shall constitute a default by the Lessee and the Lessor may, at its option, immediately terminate this lease. Any extension of time for payment of rental beyond the forty-five (45) day grace period must be authorized by Lessor and penalty interest shall be charged at the rate of one per cent per month on the amount of the delinquent rental beginning with the first day following the expiration of the forty-five (45) day grace period.

(2) Lessee shall have the right to construct, install and maintain works for reclamation or desirable for agricultural use of the premises, and Lessee shall also have the right to construct and maintain any and all roads which may be required for the proper agricultural use of said premises.

(3) This lease does not cover petroleum or petroleum products or minerals and does not give the right to Lessee to drill or develop the same.

(4) The Trustee of the Internal Improvement Fund and their duly authorized representative shall have the right at all times to inspect the premises and works of the Lessee.

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(5) This lease shall not be assigned wholly or in part, or the lands described herein subleased wholly or in part without formal approval of the assignment of sublease, including all terms of the same, by the Trustees of the Internal Improvement Fund. The Lessor reserves the right to require assignee or sublessee to furnish financial statement and surety bond before assignment or sublease is approved and becomes legally effective.

(6) Lessee agrees that they will not do or suffer any act which will result in damage to the leased premises.

(7) It is agreed and covenanted that the removable improvements placed on the premises by the Lessee which do not become a part of the realty will remain the property of the Lessee and may be removed by Lessee upon termination of the lease provided all sums due Lessor as rental for the premises are paid; otherwise, such equipment and improvements shall be and remain subject to lien for the sums due the Lessor.

(8) The Lessee shall be responsible to the Lessor for the reasonable protection of said premises against fire and damage therefrom.

(9) It is expressly agreed and understood that the Lessor assumes no liability or obligation to the Lessee, its agents and tenants, with reference to the condition of the lands and water levels at any time.

(10) The Lessee agrees to maintain any and all existing canals, drainage facilities and the like in as good condition as the same may be at the date of this lease, ordinary wear and tear excepted, and Lessee further

agrees to pay any and all drainage or special assessments or taxes of every sort and description which are now or may be hereafter lawfully assessed and levied against the leased premises.

(11) Lessee agrees that they will not cause or allow damage to the leased premises and no soil, sod, muck or other materials shall be removed from the leased premises.

(12) Lessee agrees that all permanent type improvements placed in or on the premises by the Lessee shall become a part and parcel of the realty and vest in the Lessor upon termination of the lease.

(13) It is agreed that failure to make payments of the rentals herein agreed to be paid as and when said rentals are due and payable or breach of any covenant of this lease will constitute default and the leased premises and all appurtenances related to or connected with the land shall revert to and vest in the Lessor. A resolution of the Lessor reciting notice of default or breach will be sufficient to effectuate and evidence such revision and terminate the lease, except as otherwise provided by (1) and (18) of the lease.

(14) The Lessee covenants and agrees to expend the sum of $68,348.68 by the end of the first two years of this lease in improvements upon the leased premises and shall file, on or before the end of the second year, satisfactory evidence that such improvements and expenditures have been made. It is agreed and understood that improvements which qualify under the terms of this agreement constitutes such things as clearing, drainage and construction of roads on the leased premises by the Lessee or contracted by the Lessee at rates which prevail for such work in the zone.

(15) In the event Lessee wishes to exercise its option to extend said lease notice in writing shall be filed with Lessor on or before six (6) months prior to termination of tenth year and fifteenth year of lease.

(16) The Lessee agrees to comply with all lawful requirements, rules, regulations, laws and ordinances of any legally constituted authority which in any way affect the leased premises.

(17) All notices given to the Lessee may be served by mailing the same to Talisman Sugar Corporation, 1400 First National Bank Building, Miami, Florida, unless another address is designated in writing by the Lessee to the Lessor.

(18) Should the Lessee breach any of the covenants, terms or conditions of this lease, other than the payment of rent, the Lessor may, at its option, give written notice to the Lessee to remedy such breach within ninety (90) days and in the event of failure by the Lessee to so remedy the breach to the satisfaction of the Lessor, this lease shall be void and of no further force and effect.

No. 2076-A

AGREEMENT AND PERMIT

THIS AGREEMENT AND PERMIT, entered into this 16th day of August, A. D., 1965, by and between the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, hereinafter referred to as "TRUSTEES", and the SUNNILAND PIPE LINE CO., INC., being a common carrier, organized under the laws of the State of Florida, hereinafter referred to as the "COMPANY".

WITNESSETH:

WHEREAS, it is the desire of the Company to construct, operate and maintain two (2) petroleum pipelines from the Sunniland Field in Collier County, Florida, to Port Everglades, Florida; and

WHEREAS, one of said pipelines will be four inches (4") in diameter and a second pipeline will be six inches (6") in diameter, and the four inch (4") pipeline is already in operation; and

WHEREAS, the Trustees own certain lands across which the Company proposes to construct and operate the aforesaid pipelines, which are shown in the sketch marked "Exhibit A" which is attached hereto and made a part hereof; and

WHEREAS, the Trustees have expressed their willingness to grant a permit to Company for the construction, laying, maintenance and operation of said pipelines according to the terms and conditions as hereinafter expressed; and

WHEREAS, the Trustees and the Company have previously entered into an agreement solely with reference to the aforesaid four inch (4") pipeline and it is the purpose of this agreement to provide a contractual relationship between the parties as to both the four inch (4") and the six inch (6") pipelines;

NOW THEREFORE, the Trustees and the Company, in consideration of the premises and their mutual promises as hereinafter provided, for themselves, their successors and assigns, do agree as follows:

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1. The Company and the Trustees mutually agree that the aforementioned contract entered into by and between the parties hereon on the 9th day of December, 1964, with relation solely to the four inch (4") pipeline is hereby rescinded and shall be of no further force and effect, and upon execution this Agreement shall constitute the sole contractual relationship between the parties with reference to said four inch (4") and six inch (6") piplines.

2. The Company is hereby granted a permit to construct, lay, maintain and operate two (2) petroleum pipelines over and across the lands owned by the Trustees as are more particularly located on the sketch which is attached hereto as "Exhibit A" and made a part hereof, said pipelines to be parallel and contiguous to each other, which permit is hereby granted under the following conditions:

(a) That the Company will comply with the terms and conditions of the contract entered into by the Company with the Central & Southern Florida Flood Control District, dated August 16, 1965, which contract relates to the construction and operation of the pipelines for which this permit is granted and the terms of the same are incorporated herein by reference and made a part hereof.

(b) That the Company shall comply with any reasonable rules and regulations established by the Central & Southern Florida Flood Control District.

(c) That the Company shall only be required to carry out the provisions of said contract with Central & Southern Florida Control District in order to comply with

the terms and conditions of this contract with reference to the installation and operation of said pipelines, and it shall not be necessary for the Company to notify the Trustees of any of its actions as provided for in the contract with the Central & Southern Florida Flood Control District, and notice to that district shall be deemed sufficient notice where required to the Trustees.

3. The Trustees shall be reimbursed for their expenses incurred hereunder in the sum of Two Hundred Six and 50/100 Dollars ($206.50) per year for the four inch (4") pipeline, receipt of which is hereby acknowledged, and Four Hundred Thirteen Dollars ($413.00) per year for the six inch (6") pipeline, of which $103.25 shall be payable upon the execution of this Agreement, which shall constitute that portion of the annual payment up to December 7, 1965, whereupon said annual sum shall be payable on the 7th day of December of each succeeding year, said date constituting the anniversary date of said payments and each year that this Permit shall remain in force. Said payments are for the purpose of reimbursing the Trustees for additional administrative costs and for necessary inspections.

4. The Company shall have the right of ingress and egress to and from any point in the pipelines according to routes as shall be designated by the Trustees for the purposes of maintenance of said pipelines, and shall obey all requirements of the Florida Game and Fresh Water Fish Commission relating to hunting, trapping and carrying firearms in Conservation Area 3.

5. The Company agrees to hold and save the Trustees harmless from any and all damages, either to the prop-

BLEED THROUGH POOR COPY

erty of the Trustees or that of any third persons resulting from the construction, laying, maintenance or operation of said pipelines or any use or right contemplated under this Agreement, and from any and all liability for personal injuries to any persons whomsoever, regardless of negligence.

6. The Company shall not be liable for delays or defaults in its performance of any agreement or covenant hereunder due to Force Majeure. Force Majeure, as used herein, shall mean and include: requisition, order, regulation or control by governmental authority or commission, except the normal and ordinary governmental rules and procedures relating to operation of pipelines, exercise or rights of priority or control by governmental authority for national defense or war purposes resulting in delay in obtaining or inability to obtain either material, equipment or means of transportation normally necessary in the operation of crude oil pipelines; war; scarcity of or delay in obtaining materials or equipment; (this shall not be construed to mean scarcity or delay caused by the Company attemping to obtain cheaper prices for materials); lack of labor or means of transportation of labor or materials; Acts of God; insurrection; flood; or strike.

If, by reason of Force Majeure as herein defined, the Company is prevented from or delayed in the repair, maintenance or operation of either pipeline, then while so prevented or during the period of such delay, the Company shall be relieved from all obligations, whether express or implied, imposed under this Agreement, and this Agreement shall not be subject to cancellation for failure of Company to accomplish any of the terms hereof; provided, however, should a leak occur in either pipeline

then the one with the leak shall be shut down immediately and not go back into operation until labor, equipment or materials are available for clean-up and repair in the manner set forth in Paragraph 8. of the Agreement between the District and the Company, which is incorporated herein by reference.

7. The Company agrees to operate and maintain both the six inch (6") and the four inch (4") pipeline in such a manner as not to damage the fish, wildlife or recreational resources in Conservation Area 3.

8. This Agreement shall be binding upon the successors or assigns of the respective parties.

STATE BOARD OF EDUCATION OF FLORIDA

GRAZING LEASE

NO. 2122-S

THIS AGREEMENT AND LEASE made this 28th day of July A. D. 1965, by and between the STATE BOARD OF EDUCATION OF FLORIDA, herinafter called the Lessors and LYKES BROS., INC., P.O. Box 2879, Tampa, Florida, hereinafter called the Lessee.

WITNESSETH: That for and in consideration of the payment of the annual rental hereinafter provided for, and the other terms and conditions stated herein, the Lessors do hereby let and lease to the said Lessee, their heirs and assigns, exclusively for grazing purposes, the following lands situate, lying and being in the County of Highlands, and State of Florida, to-wit:

BLEED THROUGH POOR COPY

Section 16, Township 36 South, Range 32 East, 640.00 acres, more or less.

TO HAVE AND TO HOLD the above described land unto the said Lessee for a period of Three (3) years from the date first above written, unless this lease be sooner cancelled as hereinafter provided.

The terms and conditions on which this lease is executed are as follows:

1. The Lessee agrees to pay to the Lessors for the use of said premises Six Hundred Forty and 00/100 Dollars ($640.00) per annum, based on an annual rental of One Dollar ($1.00) per acre, due and payable annually in advance, the first annual payment being Six Hundred Forty and 00/100 Dollars ($640.00) which is to be paid to the Lessors upon delivery of this lease.

2. Lessee shall have the right to construct, install and maintain works for reclamation of the leased premises for cattle grazing purposes including the right to construct and maintain any and all roads which may be required.

3. This lease does not cover petroleum or petroleum products or minerals and does not give the right to Lessee to drill for or develop the same.

4. The Board of Education and its duly authorized representatives shall have the right at all time to inspect the premises and works of the Lessee.

5. This lease shall not be assigned wholly or in part, or the lands described herein subleased wholly or in part without formal approval of the assignment of sublease, including all terms of the same by the Board of Education. The Lessors reserve the right to require assignee or sublessee to furnish financial statement and surety bond before assignment or sublease is approved and becomes legally effective.

6. Lessee agrees that it will not do or suffer any act which will result in damage to the leased premises.

7. The Lessee shall be responsible to the Lessor for the reasonable protection of said premises against fire and damage therefrom.

8. It is expressly agreed and understood that the Lessors assume no liability or obligation to the Lessee, its agents and tenants, with reference to the condition of the lands and water levels at any time.

9. The Lessee agrees to maintain any and all existing canals, drainage facilities and the like in as good condition as the same may be at the date of this lease, ordinary wear and tear excepted, and Lessee further agrees to pay any and all drainage or special assessments or taxes of every sort and description which are now or may be hereafter lawfully assessed and levied against the leased premises.

10. Lessee agrees that it will not cause or allow damage to the leased premises and no soil, sod, muck or other materials shall be removed from the leased premises.

BLEED THROUGH POOR COPY

11. Lessee agrees that all permanent type improvements placed in or on the premises by the Lessee shall become a part and parcel of the realty and vest in the Lessors upon termination of the lease.

12. The Lessee agrees to comply with all lawful requirements, rules, regulations, laws and ordinances of any legally constituted authority which in any way affect the leased premises.

13. All notices to the Lessee may be served by mailing the same to P.O. Box 2879, Tampa, Florida, unless another address is designated in writing by the Lessee to the Lessors.

14. This lease shall be subject to termination by the Lessors upon written notice of at least ninety (90) days before such termination.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA

GRAZING LEASE

NO. 2127

THIS AGREEMENT AND LEASE made and entered into on this the 7th day of September, A. D. 1965, by and between the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, hereinafter called the Lessors and BILLY ROGERS, South Bay, Florida, hereinafter called the Lessee.

WITNESSETH: That for and in consideration of the payment of the annual rental hereinafter provided for, and the other terms and conditions stated herein, the Lessors do hereby let and lease to the said Lessee, his heirs and assigns, exclusively for grazing purposes, the following land situate, lying and being in the County of Glades, and State of Florida, to-wit:

> All that part of the reclaimed lake bottom land lying between the Merriam Meander Line and the Seventeen Foot Contour of Lake Okeechobee contiguous to Lots 1, 2 and 3 in Section 3, Township 40 South, Range 33 East, less and except the right of way of State Road #78, containing 142.23 acres, more or less, as shown on the plat attached hereto and made a part of this lease.

TO HAVE AND TO HOLD the above described land unto the said Lessee for a period of Five (5) years from the date first above written, unless this lease be sooner cancelled as hereinafter provided.

The terms and conditions on which this lease is executed are as follows:

1. The Lessee agrees to pay to the Lessors for the use of said premises Three Hundred Fifty and 39/100 Dollars ($350.39) per annum, based on an average annual rental of Two and 464/100 Dollars ($2.464) per acre, due and payable annually in advance, the first annual payment being Three Hundred Fifty and 39/100 Dollars ($350.39) which is to be paid to the Lessors upon delivery of this lease.

2. The said Lessee, his heirs and assigns, shall have the full and free right of ingress and egress to, from and upon the said lands for a period ending September 6, 1970, for the purpose of utilizing said land for grazing purposes only.

3. The Lessee will not without the previous written consent of the Lessors or their successors in office, assign, sublease, or part with the possession or control of the said premises or any part thereof.

4. The said Lessee, his heirs, assigns, agents and employees will do as little injury and damage as possible to the timber or any improvements that may be on said lands and will make compensation to the Lessors for all injury and damage so done.

5. The Lessee shall save the Lessors harmless from any liability to any third persons or property which might result from operations conducted by the Lessee under the terms of this lease.

6. The Lessors or their duly authorized agent shall have the right at any and all times to inspect said lands and the works of the Lessee in any matter pertaining to this agreement and lease.

7. This lease shall be subject to termination by the Lessors upon written notice of at least ninety (90) days before such termination.

8. The Lessors assume no liability or obligation with reference to condition of lands or water levels at any time, and it is agreed to by the lessee that the lessors shall be exempt from all liability arising out of claims or damage resulting from flooding or other conditions caused by execessive water.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA

PERMIT

No. 2174

This permit issued by the Trustees of the Internal Improvement Fund of the State of Florida on this 15th day of February, 1966, to Frank Sheppard of Okeechobee, Florida:

WITNESSETH: That for and in consideration of the payment of $25.00, receipt of which is hereby acknowledged, and the other terms and conditions stated herein, the Trustees do hereby grant a permit to Frank Sheppard to take water from an existing borrow pit, located on Lots 1 through 9, Block 8 of Okeechobee Garden Subdivision for the purpose of irrigating an orange grove adjacent to such borrow pit, subject to compliance with all applicable laws and regulations.

The term of this permit shall be indefinite but subject to termination without notice when the Trustees shall determine it to be in the best interest of the state to do so.

This permit is made subject to that certain perpetual easement no. 22599 granted by the Trustees of the Internal Improvement Fund to the State Road Department of Florida on November 28, 1960, for the purpose of excavating and removing soil and other material for building and maintenance of state roads. The aforesaid easement covers all of Block 8 Okeechobee Gardens except the easterly 33 feet of lot 9.

BLEED THROUGH POOR COPY

The permittee, at the expiration of this permit shall have the right to remove all equipment, appliances, fixtures or improvements of any description placed on the premises by the permittee at any time prior to the expiration or termination of this permit as provided herein.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA

LEASE

NO. 2203

THIS CONTRACT AND LEASE made and entered into this 21st day of June, 1966, by and between the Trustees of the Internal Improvement Fund of the State of Florida, hereinafter called the Lessors, and Reynolds & Smith, Inc., a Florida corporation, hereinafter called the Lessee,

WITNESSETH: That for and in consideration of the payment of annual rental hereinafter provided for, and the other terms and conditions stated herein, the Lessors do hereby let and lease to the said Lessee the following described lands, situate, lying and being in Glades County, Florida, to-wit:

A strip of land 175 feet in width lying Southwesterly of and as measured at right angles to the Southerly right of way line of the Hoover Dike, LD-3, in Section 12, Township 42 South, Range 32 East. The Northerly boundary of the said strip of land being more particularly described as follows:

Begin at the intersection of the East line of said Section 12 and the Southwesterly right of way line of Hoover Dike and run N 68°50'08" W along the said right of way line 3,735.9 feet, more or less to an intersection with the East line of a tract of land conveyed to the Central and Southern Florida Flood Control District in Deed No. 23095, dated June 1, 1962, and the end of the Northeasterly boundary of said strip of land. Less, however, all that part of said 175 foot strip of land that lies between the Northerly prolongation of the East and West lines of Lot 3, Subdivision of that portion of Section 12, Township 42 South, Range 32 East, South of Lake Okeechobee, according to the plat hereof as recorded in Plat Book 2, Page 153, Public Records of Glades County, Florida, containing 1400 acres, more or less.

TO HAVE AND TO HOLD the above described lands unto the said Lessee for a period of three (3) years from the fifteenth of March, 1966, with option in the Lessee to renew the same for a like period upon giving the Lessor notice in writing of such intent to renew at least 30 days prior to the expiration date of this instrument, unless the same has been cancelled as hereinafter provided.

Conditions and consideration of and for which this lease is executed are as follows:

1. The Lessee agrees to pay to the Lessors for the use of said premises at the rate of One (1) Dollar per acre per annum, due and payable in the total amount of Fourteen (14) Dollars at the first of each year of this lease.

2. The above lands so leased shall be used for an airstrip only, for the landing and taking off of aircraft, and the Lessee agrees to permit the landing of all aircraft thereon, subject to the applicable State and Federal laws and regulations pertaining thereto.

3. The Lessee agrees to hold the Lessors harmless from any and all liability or damage actions resulting from the above use of the leased property.

4. As a condition to the effectiveness of this lease, Lessee agrees to provide the consent in writing of all upland owners adjacent to the above described premises for its use as an airstrip.

5. The Lessee will not do or suffer to be done in or upon the said premises any act which shall or may be a nuisance, annoyance, inconvenience or damage to the Lessors or their successors in office nor to any other person or property. What constitutes a nuisance shall be left to the discretion of the Lessors.

6. Lessors reserve to themselves the right to cancel this Lease upon One Hundred Twenty (120 days' written notice to the Lessee through his agent authorized to accept service.

7. The Lessee in accepting this lease does hereby agree that no claim of title to said land shall be made by reason of the occupancy or use thereon; that the title to said land is in the Lessors and the Lessee has no claim of any description thereto other than under this lease and upon the conditions herein stipulated.

8. The Lessee will not without the previous written consent of the Lessors or their successors in office, assign, sublease, or part with the possession or control of the said premises or any part thereof.

9. The Lessee agrees that automatically upon the termination of this lease or its extension, all rights of Lessee to the use, occupancy, and possession of said land shall terminate and the Lessee will thereupon immediately vacate the said land.

10. The Lessors reserve the right to explore for and to mine and develop minerals and petroleum on or upon the land herein described at any time, notwithstanding this lease or the rights granted hereby.

11. This lease extends no privileges to Lessee beyond the boundaries of the land herein leased.

12. Upon the neglect, failure, or refusal of the Lessee to keep, perform, or observe, in the manner and as herein provided, any of the terms, conditions, reservations, and restrictions required of said Lessee by this agreement, then and in that event this agreement and lease shall be null and void and all the rights and interests of said Lessee or any person or persons claiming under this lease shall cease and the leasehold estate herein conveyed shall immediately thereupon revert to the Lessors or successors in office and the Lessee and all persons claiming under them shall thereupon immediately vacate the said premises.

13. The Lessee, at the expiration of this lease, shall have the right to remove all equipment, appliances, fixtures or improvements, of any description placed, stored or

brought on said premises by the said Lessee at any time prior to the expiration of this lease, provided, all rent has been paid.

14. The Lessors assume no liability or obligation with reference to condition of lands or water levels at any time, and it is agreed to by the parties that the Lessors shall be exempt from all liability arising out of claims or damage resulting from flooding or other conditions caused by excessive water.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA

AGRICULTURAL LEASE

LEASE NO. 2205

THIS AGREEMENT AND LEASE made this 27th day of July, A. D. 1966, by and between the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, hereinafter called the "Lessor" and UNITED STATES SUGAR CORPORATION, P. O. Drawer 1207, Clewiston, Florida, hereinafter called the "Lessee", WITNESSETH:

That the Lessor, for and in consideration of the payment of the annual rental hereinafter provided for, does hereby lease for agricultural purposes only to the said Lessee for a period of five (5) years from the date first above written, the following land in Glades County, Florida, as follows:

Beginning at Lake Okeechobee Meander Corner between Sections 19 and 30, Township 42 South, Range 34 East; thence South 89° 42' 04" East along the continuation of the section line between Sections 19 and 30 a distance of 253.1 feet to a point; thence North 45° 00' West a distance of 850.0 feet to a point; thence North 83° 30' West a distance of 741.0 feet, more or less to a point on Lake Okeechobee Meander Line through Section 19; thence South 57° 46' 04" East along Lake Okeechobee Meander Line a distance of 1281.7 feet, more or less, to the Meander Corner between Sections 19 and 30, the Point of Beginning. Said parcel contains 6.5 acres.

upon the following terms and conditions:

1. The Lessee agrees to pay to the Lessor for the use of said premises Twenty-five and n0/100 Dollars ($25.00) per acre per annum, due and payable in advance, the first annual payment being One Hundred Sixty-Two and 50/100 Dollars ($162.50) which is to be paid to the Lessor upon delivery of this lease. Should the Lessee fail to make the annual payment of rental on the due date, or within forty-five (45) days from the date thereof, such failure shall constitute a default by the Lessee and the Lessor may, at its option, immediately terminate this lease. Any extension of time for payment of rental beyond the forty-five (45) day grace period must be authorized by the Lessor and penalty interest shall be charged at the rate of one percent (1%) per month on the amount of the delinquent rental beginning with the first day following the expiration of the forty-five (45) day grace period.

2. Lessee shall have the right to construct, install and maintain works for reclamation or desirable for agricultural use of the premises, and Lessee shall also have the right to construct and maintain any and all roads which may be required for the proper agricultural use of said premises.

3. This lease does not cover petroleum or petroleum products or minerals and does not give the right to Lessee to drill for or develop the same and Lessor specifically reserves the right to lease said lands for purposes of exploring and recovering oil and minerals by whatever means appropriate provided, however, that Lessee named herein shall be fully compensated for any and all damages that might result to said Lessee by reason of such exploration and recovery operations.

4. The Trustees of the Internal Improvement Fund and their duly authorized representative shall have the right at all times to inspect the premises and works of the Lessee.

5. This lease shall not be assigned wholly or in part, or the lands described herein subleased wholly or in part without formal approval of the assignment of sublease, including all terms of the same, by the Trustees of the Internal Improvement Fund. The Lessor reserves the right to require assignee or sublessee to furnish financial statement and surety bond before assignment of sublease is approved and becomes legally effective.

6. Lessee agrees that they will not do or suffer any act which will result in damage to the leased premises.

7. It is agreed and covenanted that the removable improvements placed on the premises by the Lessee which do not become a part of the realty will remain the property of the Lessee and may be removed by Lessee upon termination of the lease provided all sums due Lessor as rental for the premises are paid; otherwise, such equipment and improvements shall be and remain subject to lien for the sums due the Lessor.

8. The Lessee shall be responsible to the Lessor for the reasonable protection of said premises against fire and damage therefrom.

9. It is expressly agreed and understood that the Lessor assumes no liability or obligation to the Lessee, its agents and tenants, with reference to the condition of the lands and water levels at any time.

10. The Lessee agrees to maintain any and all existing canals, drainage facilities and the like in as good condition as the same may be at the date of this lease, ordinary wear and tear excepted, and Lessee further agrees to pay any and all drainage or special assessments or taxes of every sort and description which are now or may be hereafter lawfully assessed and levied against the leased premises.

11. Lessee agrees that they will not cause or allow damage to the leased premises and no soil, sod, muck or other materials shall be removed from the leased premises.

12. Lessee agrees that all permanent type improvements placed in or on the premises by the Lessee shall become a part and parcel of the realty and vest in the Lessor upon termination of the lease.

13. It is agreed that failure to make payments of the rentals herein agreed to be paid as and when said rentals are due and payable or breach of any covenant of this lease will constitute default and the leased premises and all appurtenances related to or connected with the land shall revert to and vest in the Lessor. A resolution of the Lessor reciting notice of default or breach will be sufficient to effectuate and evidence such revision and terminate the lease, except as otherwise provided by (17) of the lease.

14. The Lessee agrees to comply with all lawful requirements, rules, regulations laws and ordinances of any legally constituted authority which in any way affect the leased premises.

15. All notices given to the Lessee may be served by mailing the same to United States Sugar Corporation, P. O. Drawer 1207, Clewiston, Florida, unless another address is designated in writing by the Lessee to the Lessor.

16. Should the Lessee breach any of the covenants, terms or conditions of this lease, other than the payment of rent, the Lessor may, at its option, give written notice to the Lessee to remedy such breach within ninety (90) days and in the event of failure by the Lessee to so remedy the breach to the satisfaction of the Lessor, this lease shall be void and of no further force and effect.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA

AGRICULTURAL LEASE

LEASE NO. 2207

THIS AGREEMENT AND LEASE made this 5th day of August A. D. 1966, by and between the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, hereinafter called the "Lessor" and UNITED STATES SUGAR CORPORATION, P. O. Drawer 1207, Clewiston, Florida, hereinafter called the "Lessee", WITNESSETH:

That the Lessor, for and in consideration of the payment of the annual rental hereinafter provided for, does hereby lease for agricultural purposes only to the said Lessee for a period of five (5) years from the date first above written, with one (1) five (5) year renewal option as hereinafter provided in paragraph fourteen (14), the following land in Glades County, Florida, as follows:

> That unsurveyed part of Section 22, Township 42 South, Range 33 East, lying in the NE¼ of said Section northerly and easterly of the State Meander Line; less, however, those road rights of way and canal rights of way as shown according to the attached map of Benbow Plantation, dated July 1, 1965, containing 96.65 acres, more or less.

upon the following terms and conditions:

1. The Lessee agrees to pay to the Lessor for the use of said premises Twenty and 00/100 Dollars ($20.00) per acre per annum, due and payable annually in advance, the first annual payment being One Thousand Nine Hundred Thirty-Three and 00/100 Dollars ($1,933.00) which is to be paid to the Lessor upon delivery of this lease. Should the Lessee fail to make the annual payment of rental on the due date, or within forty-five (45) days from the date thereof, such failure shall constitute a default by the Lessee and the Lessor may, at its option, immediately terminate this lease. Any extension of time for payment of rental beyond the forty-five (45) day grace period must be authorized by the Lessor and penalty interest shall be charged at the rate of one per cent (1%) per month on the amount of the delinquent rental beginning with the first day following the expiration of the forty-five (45) day grace period.

2. Lessee shall have the right to construct, install and maintain works for reclamation or desirable for agricultural use of the premises, and Lessee shall also have the right to construct and maintain any and all roads which may be required for the proper agricultural use of said premises.

3. This lease does not cover petroleum or petroleum products or minerals and does not give the right to Lessee to drill for or develop the same and Lessor specifically reserves the right to lease said lands for purposes of exploring and recovering oil and minerals by whatever means appropriate provided, however, that Lessee named herein shall be fully compensated for any and all damages that might result to said Lessee by reason of such exploration and recovery operations.

4. The Trustees of the Internal Improvement Fund and their duly authorized representative shall have the right at all times to inspect the premises and works of the Lessee.

5. This lease shall not be assigned wholly or in part, or the lands described herein subleased wholly or in part without formal approval of the assignment of sublease, including all terms of the same, by the Trustees of the Internal Improvement Fund. The Lessor reserves the right to require assignee or sublessee to furnish financial statement and surety bond before assignment or sublease is approved and becomes legally effective.

6. Lessee agrees that they will not do or suffer any act which will result in damage to the leased premises.

7. It is agreed and covenanted that the removable improvements placed on the premises by the Lessee which do not become a part of the realty will remain the property of the Lessee and may be removed by Lessee upon termination of the lease provided all sums due Lessor as rental for the premises are paid; otherwise, such equipment and improvements shall be and remain subject to lien for the sums due the Lessor.

8. The Lessee shall be responsible to the Lessor for the reasonable protection of said premises against fire and damage therefrom.

9. It is expressly agreed and understood that the Lessor assumes no liability or obligation to the Lessee, its agents and tenants, with reference to the condition of the lands and water levels at any time.

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10. The Lessee agrees to maintain any and all existing canals, drainage facilities and the like in as good condition as the same may be at the date of this lease, ordinary wear and tear excepted, and Lessee further agrees to pay any and all drainage or special assessments or taxes of every sort and description which are now or may be hereafter lawfully assessed and levied against the leased premises.

11. Lessee agrees that they will not cause or allow damage to the leased premises and no soil, sod, muck or other materials shall be removed from the leased premises.

12. Lessee agrees that all permanent type improvements placed in or on the premises by the Lessee shall become a part and parcel of the realty and vest in the Lessor upon termination of the lease.

13. It is agreed that failure to make payments of the rentals herein agreed to be paid as and when said rentals are due and payable or breach of any covenant of this lease will constitute default and the leased premises and all appurtenances related to or connected with the land shall revert to and vest in the Lessor. A resolution of the Lessor reciting notice of default or breach will be sufficient to effectuate and evidence such revision and terminate the lease, except as otherwise provided by (17) of the lease.

14. In the event Lessee wishes to exercise its option to extend said lease for an additional term of five (5) years, notice in writing shall be filed with Lessor on or before six (6) months prior to termination of fourth year of lease. The annual rental for the additional term of

five (5) years is $25.00 per acre, due and payable in advance and subject to the same provisions set forth herein as to the first five (5) year period.

15. The Lessee agrees to comply with all lawful requirements, rules, regulations, laws and ordinances of any legally constituted authority which in any way affect the leased premises.

16. All notices given to the Lessee may be served by mailing the same to United States Sugar Corporation, P.O. Drawer 1207, Clewiston, Florida, unless another address is designated in writing by the Lessee to the Lessor.

17. Should the Lessee breach any of the covenants, terms or conditions of this lease, other than the payment of rent, the Lessor may, at its option, give written notice to the Lessee to remedy such breach within ninety (90) days and in the event of failure by the Lessee to so remedy the breach to the satisfaction of the Lessor, this lease shall be void and of no further force and effect.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA

NO. 2248

THIS AGREEMENT AND LEASE made and entered into on this the 1st day of June, A. D. 1965, between the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, hereinafter called the Lessors, and JOE B. HENDRY & COMPANY, of LaBelle, Hendry County, State of Florida, hereinafter called the Lessees.

BLEED THROUGH POOR COPY

WITNESSETH: That for and in consideration of the payment of the annual rental hereinafter provided for, and the other terms and conditions stated herein, the Lessors do hereby let and lease to the said Lessees, their successors and assigns, exclusively for grazing purposes, the following described lands situate, lying and being in the County of Glades, and State of Florida, to-wit:

PARCEL 1.

A parcel of land in the unsurveyed portion of Section 30, Township 42 South, Range 32 East, Glades County, Florida, described as follows:

Beginning at a State Pipe marking the southwest corner of said Section 30 run N. 0°31'40" W. on the west boundary thereof a distance of 379.29 feet, more or less, to an intersection with the southerly boundary of the right of way of the Calossahatchee Canal as existing; thence along said right of way boundary bearing S. 81°43'03" E. a distance of 2544.56' to a point of intersection of said right of way boundary marked by a concrete monument triangulation station named "MAUD"; thence S. 0°31'40" E. a distance of 56.63 feet to the unsurveyed south boundary of said Section 30; thence S. 89°55'51" W. a distance of 2514.93 feet to the said point of beginning, containing 13.93 acres, more or less.

PARCEL 2.

The unsurveyed portion of Section 31, Township 42 South, Range 32 East, Glades County, Florida,

lying lakeward of the unsurveyed meander of Lake Hicpochee as delineated by T. E. Frederick in March 1916, containing 177.82 acres, more or less.

PARCEL 3.

A parcel of land in the unsurveyed portions of Section 32, 33 and 34, Township 42 South, Range 32 East, Glades County Florida, described as follows:

Beginning at the southwest corner of said Section 32, as marked by a Standard State Pipe, run N. 0°20'53" E. along the west boundary of said Section a distance of 5280 feet to the unsurveyed northwest corner thereof; thence N. 89°55'51" E. a distance of 3315 feet; thence S. 34°28'44" E. a distance of 5242.45 feet; thence S. 89°50'14" E. a distance of 2355 feet; thence N. 63°06'35" E. a distance of 3899.80 ft to an intersection with the southwesterly boundary of the right of way of the Flag Hole Drainage District Canal; thence along said right of way boundary S. 30°30'54" E. a distance of 1714.95 feet to an intersection with the west boundary of a parcel of land described under Trustee Deed No. 19894; thence S. 0°32'25" W. a distance of 1209.24 feet to an intersection with the south boundary of said Section 34; thence along the south boundaries of said Sections 34, 33 and 32 the following courses, S. 89°47'31" W. a distance of 2480 feet; thence S. 89°25'27" W. a distance of 1935.80 feet; thence N. 89°50'14" W. a distance of 3308.05 feet;

thence S. 89°41'46" W. a distance of 1996.65 feet; thence S. 89°56'41" W. a distance of 3287.00 feet to the said point of beginning less the fractional part of said Section 32 to the unsurveyed meander line of Lake Hicpochee as delineated by T. E. Frederick in March 1916, containing 702.25 acres, more or less.

The total acreage contained in PARCELS 1, 2 and 3 described herein is 894.00 Acres.

TO HAVE AND TO HOLD the above described land unto the said Lessees for a period of Five (5) years from the date first above written, unless this lease be sooner cancelled as herein after provided.

The terms and conditions on which this lease is executed are as follows:

1. The Lessees agree to pay to the Lessors for the use of said premises Eight Hundred Ninety-Four and 00/100 Dollars ($894.00) per annum, based on an annual rental of One Dollar ($1.00) per acre, due and payable in advance.

2. The said Lessees, their successors and assigns, shall have the full and free right of ingress and egress to, from and upon the said lands for a period ending June 1, 1970, for the purpose of utilizing said land for grazing purposes only.

3. The Lessees will not without the previous written consent of the Lessors or their successors in office, assign, sublease, or part with the possession or control of the said premises or any part thereof.

4. The said Lessees their successors, assigns, agents and employees will do as little injury and damage as possible to the timber or any improvements that may be on said lands and will make compensation to the Lessors for all injury and damage so done.

5. The Lessees shall save the Lessors harmless from any liability to any third persons or property which might result from operations conducted by the Lessees under the terms of this lease.

6. The Lessors or their duly authorized agent shall have the right at any and all times to inspect said lands and the works of the Lessees in any matter pertaining to this agreement and lease.

7. This lease shall be subject to termination by the Lessors upon written notice of at least thirty (30) days before such termination.

8. The Lessors assume no liability or obligation with reference to condition of lands or water levels at any time, and it is agreed to by the parties that the Lessors shall be exempt from all liability arising out of claims or damage resulting from flooding or other conditions caused by excessive water.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA

CAMPSITE LEASE

NO. 2257

THIS CONTRACT AND LEASE made and entered into this 10th day of May, A. D. 1967, by and between the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, hereinafter called

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the Lessors and RALPH J. BRANDON, 302 Nesbit Street, Punta Gorda, Florida, and STEPHEN R. RODDY, 733 East Marion Avenue, Punta Gorda, Florida, hereinafter called the Lessee.

WITNESSETH: That for and in consideration of the payment of the rental hereinafter provided for, and the other terms and conditions stated herein, the Lessors do hereby let and lease to the said Lessee exclusively for campsite purposes the following submerged land situate, lying and being in the County of Charlotte and State of Florida, to-wit:

> An area at Latitude 26°46'20.40" North and Longitude 82°12'37.56" West, lying and being in Section 34, Township 42 South, Range 21 East, in Bull Bay, Charlotte County, Florida, on which is located a small fish camp on piling, containing 400 square feet, more or less.

subject to compliance with all applicable laws and regulations.

TO HAVE AND TO HOLD the above described parcel of sovereignty submerged land unto the said Lessee for a period of one (1) year ending May 9, 1968, with option granted herein to said Lessee to extend said lease for a period of one (1) year at the expiration of each yearly period for the next ensuing four (4) years, unless terminated at an earlier date as hereinafter provided. The terms and conditions on and for which this Contract and Lease is executed are as follows:

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1. The Lessee agrees to pay to Lessors for the use of said premises One Hundred Dollars ($100.00) per annum, payable annually in advance, the first annual payment being due as of May 10, 1967. The annual periods shall begin on the anniversary date of this contract.

2. The option to extend the term of this lease as herein above set forth shall not become effective unless and until the Lessee shall notify the Lessors in writing not less than thirty (30) days prior to any anniversary date of this lease, of said Lessee's intention to extend this lease for the additional period of one (1) year for a total term not exceeding five (5) years from date of this instrument. The annual rental due and payable as provided herein shall be forwarded with the written notice required to extend the term of this lease as set forth in this paragraph.

3. The Lessee in accepting this lease does hereby agree that no claim of title to said land shall be made by reason of occupancy or use thereof; that the title to said land is in the Lessors, and the Lessee has no claim of any description thereto, other than under this lease and upon the conditions herein contained.

4. This lease is non-assignable.

5. The Lessors reserve the right to explore for and to mine and develop minerals and petroleum in, on or under the land herein described at any time, notwithstanding this lease or the rights granted hereby. The parcel of submerged land herein leased is subject to any existing or future oyster leases executed by the Florida Board of Conservation as to this area.

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6. The lease extends no privileges to the Lessee beyond the boundaries of the land herein leased.

7. The leased premises shall be used exclusively for campsite purposes.

8. The Lessee shall furnish unto the Trustees a good and lawful surety bond by a Surety Company authorized to do business in the State of Florida, in the amount of $1,000.00 to guarantee removal of fish camp from the herein described property at the end of the lease term or any extension thereof or upon termination of this lease for failure to comply with the terms hereof.

9. The Lessee at the expiration of this lease, shall have the right to remove all equipment, appliances, fixtures or improvements, of any description placed, stored or brought on said premises by the said Lessee at any time prior to the expiration of this lease, provided all rent has been paid.

10. All sanitary facilities installed on the leased premises shall be approved in writing by the State Board of Health, and said approval shall be filed with the Lessors prior to issuance of subject lease. Such facilities shall be of such design and be maintained in such a manner as to assure there will be no pollution of any adjacent waters or oyster beds caused by use of these sanitary facilities.

11. The Lessee shall save the Lessors harmless from any liability to any third persons or property which might result from the occupancy by the Lessee under the terms of this lease.

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12. The Lessors shall have the right to cancel this lease at any time during its term, upon giving to the Lessee one hundred and twenty (120) days written notice of termination. The Lessee shall thereupon peacefully surrender possession of the premises at the expiration of said one hundred and twenty (120) day period.

13. Upon the neglect, failure, or refusal of the Lessee to keep, perform or observe, in the manner and as herein provided, any of the terms, conditions, reservations, and restrictions required of said Lessee by this agreement, then and in that event this agreement and lease shall be null and void, and all the rights and interests of the said Lessee or any person or persons claiming under this lease shall cease and the leasehold estate herein conveyed shall immediately thereupon revert to the Lessors or their successors in office.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA

LEASE NO. 2293

THIS AGREEMENT AND LEASE made and entered into this 5th day of September, A. D. 1967, by and between the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, as Lessors, and INDIAN RIVER BROADCASTING COMPANY, a Florida Corporation, as Lessee.

WITNESSETH: That the Lessors, for and in consideration of the mutual agreements and covenants hereinafter set forth and in pursuance of authorization by said Lessors in meeting on September 5, 1967, do by these presents hereby lease unto the Lessee hereinabove named, sub-

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ject to the provisions and conditions hereinafter set forth, the following described submerged land lying and being in the County of St. Lucie and State of Florida, to-wit:

> Beginning at the Point of Intersection of the face of existing concrete seawall on the westerly shore of Indian River and the easterly extension of the south line of Block 7 of Riverside Addition, as per plat thereof recorded in Plat Book 3, Page 51, St. Lucie County, Florida, Public Records, said Point being 385.44 feet easterly from the southwest corner of said Block 7; run thence north 5°08' west, along the face of said existing seawall and the westerly shore of Indian River, 197.5 feet; thence north 81°13' east, 300 feet; thence south 5°08' east, 197.5 feet; thence south 81°13' west, 300 feet to the Point of Beginning; the same being a tract of submerged land lying easterly from the west shore of Indian River in Government Lot 4, Section 10, Township 35 South, Range 40 East, St. Lucie County, Florida, and containing 1.36 acres.

as and for the site of a radio transmission tower and associated radial ground network.

TO HAVE AND TO HOLD the above described land unto the Lessee for a period of Fifteen (15) Years from the 19th day of August, 1970, unless this lease be sooner cancelled as hereinafter provided.

The Lease is made subject to the following provisions and conditions, viz:

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1. Lessee agrees to pay to the Lessors at Tallahassee, Florida, an annual rental of One Hundred Seventy-Five and 00/100 Dollars ($175.00) payable in advance on or before each anniversary date of this lease, however, said rental will be subject to review by the Lessors at the end of the fourth and ninth years of the term of said lease to determine if adjustment is appropriate.

2. Lessee agrees and obligates itself to comply with all applicable regulations and requirements of the U. S. Army Corps of Angineers, Federal Communications Commission, Federal Aviation Administration and State and local regulations in the construction, maintenance and operations conducted upon said land.

3. Lessee agrees to save the Lessors harmless from damages or claims arising out of Lessee's exercise of rights granted by this lease.

4. Lessee agrees not to assign this lease or any rights granted hereunder without prior consent in writing of the Lessors.

5. Lessee covenants and agrees that it will, at the termination of this lease yield possession to Lessors and remove from the leased premises all installations placed thereon by the Lessee.

6. This lease does not cover petroleum or petroleum products or minerals and does not give the right to Lessee to drill for or develop the same and Lessors specifically reserve the right to lease said lands for purposes of exploring and recovering oil and minerals by whatever means appropriate provided, however, that Lessee named herein

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shall be fully compensated for any and all damages that might result to said Lessee by reason of such exploration and recovery operations.

7. All notices given to Lessee will be served by mailing the same to its address in Fort Pierce, Florida, unless another address is designated in writing to the Lessors by the Lessee.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA

CAMPSITE LEASE

NO. 2261

THIS CONTRACT AND LEASE made and entered into this 10th day of May, A. D. 1967, by and between the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, hereinafter called the Lessors and JAMES A. KELLY, Eagles Nest, Punta Gorda, Florida, hereinafter called the Lessee.

WITNESSETH: That for and in consideration of the payment of the rental hereinafter provided for, and the other terms and conditions stated herein, the Lessors do hereby let and lease to the said Lessee exclusively for campsite purposes the following submerged land situate, lying and being in the County of Charlotte and State of Florida, to-wit:

An area at Latitude 26°46'25.2" North Longitude 82°12'39" West, lying and being in Section 34 Township 42 South, Range 21 East, in Bull Bay,

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Charlotte County, Florida, on which is located a small fish camp on piling, containing 400 square feet, more or less.

subject to compliance with all applicable laws and regulations.

TO HAVE AND TO HOLD the above described parcel of sovereignty submerged land unto the said Lessee for a period of one (1) year ending May 9, 1968, with option granted herein to said Lessee to extend said lease for a period of one year at the expiration of each yearly period for the next ensuing four (4) years, unless terminated at an earlier date as hereinafter provided. The terms and conditions on and for which this Contract and Lease is executed are as follows:

1. The Lessee agrees to pay to Lessors for the use of said premises One Hundred Dollars ($100.00) per annum, payable annually in advance, the first annual payment being due as of May 10, 1967. The annual periods shall begin on the anniversary date of this contract.

2. The option to extend the term of this lease as herein above set forth shall not become effective unless and until the Lessee shall notify the Lessors in writing not less than thirty (30) days prior to any anniversary date of this lease, of said Lessee's intention to extend this lease for the additional period of one (1) year for a total term not exceeding five (5) years from date of this instrument. The annual rental due and payable as provided herein shall be forwarded with the written notice required to extend the term of this lease as set forth in this paragraph.

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3. The Lessee in accepting this lease does hereby agree that no claim of title to said land shall be made by reason of occupancy or use thereof; that the title to said land is in the Lessors, and the Lessee has no claim of any description thereto, other than under this lease and upon the conditions herein contained.

4. This lease is non-assignable.

5. The Lessors reserve the right to explore for and to mine and develop minerals and petroleum in, on or under the land herein described at any time, notwithstanding this lease or the rights granted hereby. The parcel of submerged land herein leased is subject to any existing or future oyster leases executed by the Florida Board of Conservation as to this area.

6. The lease extends no privileges to the Lessee beyond the boundaries of the land herein leased.

7. The leased premises shall be used exclusively for campsite purposes.

8. The Lessee shall furnish unto the Trustees a good and lawful surety bond by a Surety Company authorized to do business in the State of Florida, in the amount of $1,000.00 to guarantee removal of fish camp from the herein described property at the end of the lease term or any extension thereof or upon termination of this lease for failure to comply with the terms hereof.

9. The Lessee at the expiration of this lease, shall have the right to remove all equipment, appliances, fixtures or improvements, of any description placed, stored

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or brought on said premises by the said Lessee at any time prior to the expiration of this lease, provided all rent has been paid.

10. All sanitary facilities installed on the leased premises shall be approved in writing by the State Board of Health, and said approval shall be filed with the Lessors prior to issuance of subject lease. Such facilities shall be of such design and be maintained in such a manner as to assure there will be no pollution of any adjacent waters or oyster beds caused by use of these sanitary facilities.

11. The Lessee shall save the Lessors harmless from any liability to any third persons or property which might result from the occupancy by the Lessee under the terms of this lease.

12. The Lessors shall have the right to cancel this lease at any time during its term, upon giving to the Lessee one hundred and twenty (120) days written notice of termination. The Lessee shall thereupon peacefully surrender possession of the premises at the expiration of said one hundred and twenty (120) day period.

13. Upon the neglect, failure, or refusal of the Lessee to keep, perform or observe, in the manner and as herein provided, any of the terms, conditions, reservations, and restrictions required of said Lessee by this agreement, then and in that event this agreement and lease shall be null and void, and all the rights and interests of the said Lessee or any person or persons claiming under this lease shall cease and the leasehold estate herein conveyed shall immediately thereupon revert to the Lessors or their successors in office.

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TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA

GRAZING LEASE

NO. 2274

THIS AGREEMENT AND LEASE made and entered into on this 10th day of July, A. D. 1967, between the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, hereinafter called the Lessors, and MRS. KATHERIN M. WAGGAMAN, of the County of Highlands, State of Florida, hereinafter called the Lessee,

WITNESSETH: That for and in consideration of the payment of the annual rental hereinafter provided for, and the other terms and conditions stated herein, the Lessors do hereby let and lease to the said Lessee, her heirs and assigns, exclusively for grazing purposes, the following lands situate, lying and being in the County of Highlands, and State of Florida, to-wit:

Lots 4, 5, 6, 7, SE¼ of NW¼, SE¼, E½ of SW¼. Section 27, containing 500.33 acres.

Lots 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, Section 28, containing 362.60 acres.

Lots 7 and 14, Section 33, containing 20.24 acres.

Lot 1, E½ of NW¼, Section 34, containing 131.91 acres.

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NE¼, E½ of SE¼, W½ of SE¼, E½ of SW¼, Section 34, containing 400.00 acres.

All the above lying and being in Township 35 South, Range 31 East, Highlands County, containing a total of 1,415.08 acres.

TO HAVE AND TO HOLD the above described land unto the said Lessee for a period of three (3) years from the 10th day of July 1967, unless this lease be sooner cancelled as hereinafter provided.

The terms and conditions on which this lease is executed are as follows:

1. The Lessee agrees to pay to the Lessors for the use of said premises Two Thousand Four Hundred Seventy-Six and 39/100 ($2,476.39) Dollars per annum, based on an annual rental of One and 75/100 ($1.75) Dollars per acre, due and payable annually in advance, the first annual payment being Two Thousand Four Hundred Seventy-Six and 39/100 ($2,476.39) Dollars which is to be paid to the Lessors upon delivery of this lease. The annual periods for the life of this lease shall thereafter begin on the 10th day of July.

2. The said Lessee, her heirs and assigns, shall have the full and free right of ingress and egress to, from, and upon the said lands for a period ending July 10, 1970, for the purpose of utilizing said land for grazing purposes only and does not include the exclusive right to hunt or fish.

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3. The Lessee will not without the previous written consent of the Lessors or their successors in office, assign, sublease, or part with the possession or control of the said premises or any part thereof.

4. The said Lessee, her heirs, assigns, agents and employees will do as little injury and damage as possible to the timber or any improvements that may be on said lands and will make compensation to the Lessors for all injury and damage so done.

5. The Lessee shall save the Lessors harmless from any liability to any third persons or property which might result from operations conducted by the Lessee under the terms of this lease.

6. The Lessors or their duly authorized agents shall have the right at any and all times to inspect said lands and the works of the Lessee in any matter pertaining to this agreement and lease.

7. This lease shall be subject to termination by the Lessors upon written notice of at least one hundred and eighty (180) days before such termination.

8. The Lessors assume no liability or obligation with reference to condition of lands or water levels at any time, and it is agreed to by the parties that the Lessors shall be exempt from all liability arising out of claims or damage resulting from flooding or other conditions caused by excessive water.

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TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA

GRAZING LEASE

No. 2308-S

THIS AGREEMENT AND LEASE made and entered into on this 23rd day of November, A. D. 1967, by and between the Trustees of the Internal Improvement Fund of the State of Florida on behalf of the State Board of Education of Florida, hereinafter called the Lessors and Thomas H. Baker, P. O. Box 1812, Fort Myers, Florida, hereinafter called the Lessee.

WITNESSETH: That for and in consideration of the payment of the annual rental hereinafter provided for, and the other terms and conditions stated herein, the Lessors do hereby let and lease to the said Lessee, his heirs and assigns, exclusively for grazing purposes, the following lands situate, lying and being in the County of Collier, and State of Florida, to-wit:

Section 16, Township 49 South, Range 31 East, containing 640.00 acres, more or less.

TO HAVE AND TO HOLD the above described land unto the said Lessee for a period of Three (3) years from the 23rd day of November, 1967, unless this lease be sooner cancelled as hereinafter provided.

The terms and conditions on which this lease is executed are as follows:

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1. The Lessee agrees to pay to the Lessors for the use of said premises Two Hundred Eighty-One and 60/100 ($281.60) Dollars per annum, based on an annual rental of Forty-Four Cents (44¢) per acre, due and payable annually in advance, the first annual payment being Two Hundred Eighty-One and 60/100 ($281.60) Dollars which is to be paid to the Lessors upon delivery of this lease.

2. The said Lessee, his heirs and assigns, shall have the full and free right of ingress and egress to, from and upon the said lands for a period ending November 23, 1970, for the purpose of utilizing said land for grazing purposes only.

3. The Lessee will not without the previous written consent of the Lessors or their successors in office, assign, sublease, or part with the possession or control of the said premises or any part thereof.

4. The said Lessee, his heirs, assigns, agents and employees will do as little injury and damage as possible to the timber or any improvements that may be on said lands and will make compensation to the Lessors for all injury and damage so done.

5. The Lessee shall save the Lessors harmless from any liability to any third persons or property which might result from operations conducted by the Lessee under the terms of this lease.

6. The Lessors or their duly authorized agent shall have the right at any and all times to inspect said lands and the works of the Lessee in any matter pertaining to this agreement and lease.

7. This lease shall be subject to termination by the Lessors upon written notice of at least ninety (90) days before such termination.

8. The Lessors assume no liability or obligation with reference to condition of lands or water levels at any time, and it is agreed to by the parties that the Lessors shall be exempt from all liability arising out of claims or damage resulting from flooding or other conditions caused by excessive water.

TRUSTEES, INTERNAL IMPROVEMENT FUND STATE OF FLORIDA

SAND LEASE

No. 2319.

THIS CONTRACT, LEASE, AND PERMIT, made and entered into this 24th day of January, 1968, between the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, hereinafter called the Trustees, party of the first part, and FLORIDA GRAVEL COMPANY, a corporation organized and existing under the laws of the State of Florida, hereinafter called Lessee, party of the second part.

WITNESSETH: That the Trustees under and by virtue of Section 253.45, Florida Statutes, and for and in consideration of the sum of 15¢ per cubic yard, same to be paid as hereinafter set forth, do hereby grant, bargain, and sell to the Lessee and to its successors and assigns for a period of four years from January 1, 1968, the right, leave, license, and permit to dredge, mine, and take sand and gravel, or either, for commercial purposes from that certain territory and area, to wit:

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All that portion of the Apalachicola and Chattahoochee Rivers in the State of Florida, from Apalachicola, Franklin County, Florida, to the line between the States of Alabama and Florida;

Together with the right, leave, license, and permit to enter into and upon the said rivers and territory with the necessary machinery and equipment to mine, dredge, and take from the said river bottoms and waters, sand and gravel, or both, and conveying to the Lessee the title to all sand and gravel so taken and paid for. The right, leave, license, and permit hereby granted is upon the following terms and conditions:

FIRST: That the Lessee in its operations upon said rivers and in taking sand and gravel therefrom shall not in any manner interfere with the navigation of the waters of said rivers or the public's legitimate use of said waters.

SECOND: That the said Lessee shall not dredge or take sand or gravel from any locality where the taking of same would injure or damage any private or public structure or property.

THIRD: That at the end of each calendar month during the life and term of this lease and permit, the Lessee shall faithfully account to the Trustees for all sand and gravel, or either, taken during the preceding month and pay over to the Trustees the sum of 15¢ per cubic yard for sand and gravel so taken. In no case shall the time of the accounting and making payment for sand and gravel so taken in any one month be later than the tenth day of the succeeding month.

FOURTH: That in accounting and paying for sand and gravel so taken, the Trustees agree to take and accept shipping weights where such sand and gravel is weighed for shipping by rail, or otherwise, or standard weights where such sand and gravel is used or sold without shipping.

FIFTH: That the Lessee shall pay to the Trustees the sum of $25.00 for each and every month during the life of this contract, whether that amount of sand and gravel is taken or not.

SIXTH: That the Lessee shall at all times during the period of this lease have deposited in the hands of the Trustees a good and sufficient bond in the sum of $1,000.00 conditioned that the said Lessee will well and faithfully account to and pay to the Trustees for all sand and gravel taken under this contract, and will well and faithfully abide by and live up to all the terms and conditions of this contract, lease, and permit. Such bond can be given by the Lessee depositing with the Trustees securities satisfactory with the Trustees in the sum of $1,000.00 or by giving bond with some reputable surety company authorized to do business in Florida as surety.

SEVENTH: That the Lessee shall at all times during the period of this lease sell sand and gravel, or either, to all State institutions at a price no greater than the minimum charged to any person or concern doing business with said Lessee.

EIGHTH: That should said Lessee, its successors or assigns, at any time fail to live up to and carry out any of the terms and conditions of this contract, lease,

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and permit, the Trustees in that event shall have the right to cancel the same and stop the further use of the said property hereunder.

NINTH: That the Trustees or their duly authorized agents shall have the right at any and all times to inspect the books and works of the Lessee in any matter pertaining to this contract, lease, and permit.

TENTH: That should the Lessee assign its rights hereunder, such assignment shall not be binding on the Trustees until a copy of such assignment has been filed and deposited with the Trustees and until the Assignee has given bond as required of the Lessee herein.

ELEVENTH: That this lease and permit is not exclusive but the Trustees reserve the right at any time to grant similar or other permits to other parties covering the same territory herein described.

TWELFTH: That the Trustees reserve the right to cancel this lease and permit by giving 120 days written notice to the Lessee.

WITNESS FURTHER, That the Lessee for itself and its successors and assigns does hereby accept this contract, lease, and permit upon the terms and conditions herein specified and set forth, and does hereby promise, obligate, and agree to live up to, observe, and abide by all the terms and conditions hereof, and to make full accountings and payments promptly as provided for in this instrument.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA

AGRICULTURAL LEASE

No. 2341

THIS AGREEMENT AND LEASE made this 1st day of August, 1968, by and between the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, hereinafter called the "Lessors," and S. N. KNIGHT AND SONS, INC., a Florida corporation, its successors and assigns, with its principal place of business in Belle Glade, Florida, hereinafter called the "Lessee,"

WITNESSETH:

That the Lessors, for and in consideration of the sum of Fourteen Thousand Five Hundred Ninety-Three Dollars and Eighty Cents ($14,593.80), being rental paid in advance for the first year of this lease, do hereby lease for agricultural purposes only to the said Lessee for a period of twenty (20) years from and after August 1, 1968, the following described lands in Palm Beach County, Florida, to-wit:

> All of the South 50 chains of Section 11; all of the South 62.125 chains of Section 12; all of Sections 13, 14, 15, 22, 23, 26, 27 and 34; lying 350 feet westerly, as measured at right angles, from the westerly right of way line of Central and Southern Florida Flood Control Levee L-7, in Township 44 South, Range 39 East, Palm Beach County, Florida, containing 3,742 acres, more or less.

upon the following terms and conditions:

(1) Lessee agrees and obligates itself to pay to the Lessors annually in advance, as and for rental for said land, the sum of $3.90 per acre per year for the first and second years; $6.50 per acre per year for the third and fourth years; $9.10 per acre per year for the fifth and sixth years; $11.70 per acre per year for the seventh and eighth years; $12.92 per acre per year for the ninth and tenth years; $17.55 per acre per year for the eleventh through fifteenth years; and $20.80 per acre per year for the sixteenth through twentieth years. Should the Lessee fail to make the annual payment of rentals on or by the due date, or within thirty (30) days from the date thereof, such failure shall constitute a default by the Lessee and the Lessors may, at their option, immediately terminate this lease. Any extension of time for payment of rental beyond the thirty (30) day grace period must be authorized by Lessors and penalty interest shall be charged at the rate of one per cent (1%) per month or fraction thereof on the amount of the delinquent rental beginning with the first day following the due date of the rental.

(2) Lessee shall have the right to construct, install and maintain works for reclamation of the premises for agricultural use. Also, the right to construct and maintain any and all roads which may be required for the proper agricultural use of said premises.

(3) This lease does not cover petroleum or petroleum products or minerals and does not give the right to Lessee to drill for or develop the same and Lessors specifically reserve the right to lease said lands for purposes of exploring and recovering oil and minerals by whatever means

appropriate; provided, however, that Lessee named herein shall be fully compensated for any and all damages that might result to said Lessee by reason of such exploration and recovery operations.

(4) That the Lessors or their duly authorized agents shall have the right at any and all times to inspect said lands and the works of the Lessee in any matter pertaining to this agreement and lease.

(5) This lease shall not be assigned wholly or in part, or the lands described herein subleased wholly or in part without formal approval by the Trustees of the Internal Improvement Fund of such assignment or sublease. The Lessors reserve the right to require assignee or sublessee to furnish financial statement and surety bond before assignment or sublease is approved and becomes legally effective.

(6) Lessee agrees that it will not do or suffer any act which will result in damage to the leased premises.

(7) It is agreed and covenanted that the removable improvements placed on the premises by the Lessee which do not become a part of the realty will remain the property of the Lessee and may be removed by Lessee upon termination of the lease, provided all sums due Lessors as rental for the premises are paid; otherwise, such equipment and improvements shall be and remain subject to lien for the sums due the Lessors.

(8) The Lessee shall be responsible to the Lessors for the reasonable protection of said premises against fire and damage therefrom.

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(9) It is expressly agreed and understood that the Lessors assume no liability or obligation to the Lessee, its agents and tenants, with reference to the condition of the lands and water levels at any time.

(10) The Lessee agrees to maintain any and all existing canals, drainage facilities and the like in as good condition as the same may be at the date of this lease, ordinary wear and tear excepted, and Lessee further agrees to pay any and all drainage or special assessments or taxes of every sort and description which are now or may be hereafter lawfully assessed and levied against the leased premises.

(11) It is mutually agreed that the estimated acreage as herein provided has been accepted by both parties for the purpose of calculating rentals due; provided, however, the Lessee may at its own expense furnish a survey by a registered land surveyor who is satisfactory to the Lessor, showing the acreage as calculated from said actual survey and said surveyed acreage shall thereafter fix the liability of the Lessee for the payment of future rentals beginning with the next succeeding semi-annual installment of rent herein provided.

(12) The Lessee covenants and agrees to expend the sum of One Hundred Dollars ($100.00) per acre in permanent improvements on the leased land within the first five (5) years of this lease. Lessee shall file with Lessors, on or before the end of the fifth year of this lease satisfactory evidence that such improvements and expenditures have been made. It is agreed and understood that improvements which qualify under the terms of this provision as permanent improvements constitute such things

as clearing, drainage facilities, bridges and roads to the leased lands at rates which prevail for such work in the zone.

(13) The Lessee agrees to comply with all lawful requirements, rules, regulations, laws and ordinances of any legally constituted authority which in any way affect the leased premises.

(14) All notices given to the Lessee may be served by mailing the same to Belle Glade, Florida, unless another address is designated in writing by the Lessee to the Lessors.

(15) Should the Lessee breach any of the covenants, terms or conditions of this lease, other than the payment of rent, the Lessors may at their option, give written notice to the Lessee to remedy such breach within ninety (90) days and in the event of failure by the Lessee to so remedy the breach to the satisfaction of the Lessors, this lease shall be void and of no further force and effect.

(16) It is agreed that failure to make payments of the rentals herein agreed to be paid as and when said rentals are due and payable or breach of any covenant of this lease will constitute default and the leased premises and all appurtenances related to or connected with the land shall revert to and vest in the Lessors. A written notice from the Lessors reciting notice of default or breach will be sufficient to effectuate and evidence such reversion and terminate the lease, except as otherwise provided by paragraphs (1) and (15) of the lease.

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(17) It is agreed and understood that leased premises will be actively utilized for agricultural purposes only and the land or any part thereof will not be allowed to remain idle for the purpose of receiving agricultural subsidies.

(18) It is understood that the Lessee may plant sugar cane on the leased property. It is agreed by the Lessors that they will do anything necessary at the end of the lease term, provided this lease shall run for its full term of Twenty (20) years, to transfer to the Lessee any growing quota or proportionate shares that might be established for the leased premises during the lease term.

SUBLEASE AGREEMENT

THIS AGREEMENT made this 9th day of January, 1969, by and between S. N. KNIGHT & SONS, INC., a Florida corporation, hereinafter called the Sublessor, and SEMINOLE SUGAR CORP., a Florida corporation, hereinafter called the Sublessee.

WITNESSETH:

That the Sublessor for and in consideration of the sum of $2,866.50, paid by Sublessee and Dr. J. Allen Baker being rental paid in advance for the period from August 1, 1968, to July 31, 1969, payable upon this Sublease being approved by the Trustees of the Internal Improvement Fund of the State of Florida, does hereby lease for agricultural purposes only to the Sublessee for a period 19 years and 11 months from and after August 1, 1968, the following described lands in Palm Beach County, Florida, to-wit:

All of the South 50 chains of Section 11 and all of the South 62.125 chains of Section 12, lying 350 feet Westerly, as measured at right angles from the Westerly right-of-way line of the Central and Southern Florida Flood Control Levee L-7, all in Township 44 South, Range 39 East.

upon the following terms and conditions:

1. Sublessee agrees to pay to Sublessor annually in advance, as and for rental for said lands during the term hereof, the sum of $3.90 per acre for the second year of this lease, the sum of $6.50 per acre per year for the 3rd and 4th years, $9.10 per acre per year for the 5th and 6th years, $11.07 per acre per year for the 7th and 8th years, $12.92 per acre per year for the 9th and 10th years, $17.55 per acre per year for the 11th through the 15th years, and $20.80 per acre per year for the 16th through the 20th years. The rent due hereunder shall be paid 10 days prior to the date on which the corresponding installment of rental is payable under the terms of the Agricultural Lease recorded in Official Record Book 1670, Page 1522, of the Palm Beach County, Florida, public records. Should the Sublessee fail to make the payment of rentals provided hereunder on or by the due date, or within 10 days from the date thereof, such failure shall constitute a default by the Sublessee and the Sublessor may, at its option, immediately terminate this lease.

2. This lease is made subject to all the terms and conditions of that certain Agricultural Lease #2341, dated August 1, 1968, by and between the Trustees of the Internal Improvement Fund of State of Florida and S. N. KNIGHT & SONS, INC., which lease is recorded in Of-

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ficial Record Book 1670, Page 1522, of the Palm Beach County, Florida, public records, and in accordance with paragraph 5 of said Agricultural Lease, this lease shall not become effective until same is formally approved by said Trustees.

3. It is mutually agreed that the number of acres contained in the lands encumbered by the within lease if 735 acres for the purpose of determining the rental due Sublessor hereunder for each year's rent.

4. The Sublessee shall pay any and all drainage or special assessments or taxes of every sort and description assessed against the subleased lands which the Sublessor as Lessee under said Agricultural Lease is required to pay and shall pay the same within 10 days of the demand for payment by Sublessor and proof of same in writing by Sublessor.

5. Sublessee shall make all improvements to the subleased lands which the Sublessor as Lessee under said Agricultural Lease is required to make to the subleased lands.

6. Sublessee further agrees to reimburse Sublessor a sum equal to 735/3572nds of the total engineering costs with respect to the development of a drainage and pumping station for the lands embraced by said Agricultural Lease and the costs of securing the necessary permits from the U. S. Corps of Engineers and the Central and Southern Flood Control District.

7. Sublessee has paid the sum of $1,039.29 to Sublessor at or before the execution of this lease to reimburse

Sublessor for Sublessee's portion of the travel, legal and administrative expenses in securing the abovesaid State Lease.

8. USE: The Sublessee will use the said property only for a farming operation or cattle operation.

The Sublessee will not commit waste to or on the leased premises, nor take or remove any earth, muck, soil, sod, rock or other substance from said premises.

9. FIRES: The Sublessee agrees to be diligent in its efforts to prevent fires to the leased muck lands at all times and in the event of such fire, to promptly notify the Everglades Fire Control District and the Sublessor, if a representative of the Sublessor can be reasonably located, and to take all reasonable measures itself to put out such fire or fires.

10. WATER CONTROL: The Sublessor does not warrant the productivity of the land nor does it guarantee in any way the strength of any dike on or adjacent to said property and said property is rented "as is". The Sublessor does not warrant the water control system is adequate for the said lands. The Sublessor does not warrant the productivity of the soil of said lands.

11. INSPECTION OF PREMISES BY SUBLESSOR: The Sublessor reserves the right for itself and its representatives, at all reasonable times to enter upon the aforesaid premises for the purpose of viewing or inspecting same; but it is agreed that in doing same that it or its legal representatives will not interfere in any way with the operations of the Sublessee.

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12. MINERAL RIGHTS: It is understood by the Sublessee that no rights are given under this lease to search for or develop gas, petroleum or minerals that might be on or below the said leased premises.

13. REMEDIES FOR BREACH OF AGREEMENT: If either the Sublessor or the Sublessee shall fail to perform or shall breach, any agreement of this lease other than the agreement of the Sublessee to pay rent, for thirty (30) days after a written notice specifying the performance required shall have been given to the party failing to perform, the party so giving notice may institute action in a court of competent jurisdiction to terminate this Sublease or to compel performance of the Sublease, and the prevailing party in that litigation shall be paid by the losing party all expense of such litigation including a reasonable attorney's fee.

14. MISCELLANEOUS: The Sublessee agrees that throughout said term and forever afterward it will indemnify and save harmless the Sublessor from and against any and all liability arising from injury during the said term to persons or property, occasioned wholly or in part by any act or omission of the Sublessee, or of the guests, officers, servants, employees, agents or assigns of the Sublessee. The Sublessee shall indemnify the Sublessor and make good all damages suffered by the Sublessor in the event that the Sublessee does not surrender up the leased premises at the end of the said leased term.

15. ASSIGNMENT OR SUBLETTING: The Sublessee shall not have the right to assign this lease or to sublease the property covered by this lease.

16 REMEDIES FOR FAILURE TO PAY RENT: If any rent required by this Sublease shall not be paid when due, the Sublessor shall have the option to:

a() Terminate this Sublease.

(b) Resume possession and re-lease or rent the property for the remainder of the term for the account of the Sublessee, and recover from the Sublessee, at the end of the term or at the time each payment of rent comes due under this Sublease as the Sublessor may choose, the difference between the rent specified in the Sublease and the rent received on the re-leasing or renting.

In either event, the Sublessor shall also recover all expenses incurred by reason of the breach, including reasonable attorney's fee.

It is agreed that the remedies of the Sublessor herein provided shall not in any way limit any other rights or remedies that it may have by operation of the law.

17. FLOODING: The parties to this Sublease agree that in the event the Subleased lands are flooded that the same will not relieve Sublessee of its obligation to pay rent hereunder.

18. PROPORTIONATE SHARES: Sublessor and Sublessee mutually covenant, understand and agree that the leased premises may be utilized by the Sublessee for the purpose of growing sugar cane thereon. It is specifically understood and agreed between the Sublessor and Sublessee hereunder that the Sublessee shall at all times while this Sublease is not in default retain the complete owner-

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ship and control of all such quotas and the historic data connected therewith and shall have the unqualified privilege and the right at any time during the term of this Sublease and prior to default of removing and eliminating from the leased premises any such quotas by conducting its agricultural operations upon the leased premises or otherwise in conformance with the applicable provisions of said sugar legislation and regulations.

Sublessor and Sublessee mutually covenant, understand and agree that should the Sublessee fail to pay the rent due under this Sublease and should this Sublease be terminated due to the fault of Sublessee, then any proportionate share acreage quotas and historic data connected therewith that may attach to the leased lands shall become and remain the property of the Sublessor, it's successors and assigns.

19. SPECIAL AGREEMETNS AS TO DEVELOPMENT AND PUMPING OF SUBLEASED LANDS: It is agreed that Sublessor has preliminary plans for the erection of a pumping station at approximately the intersection of the East-West Center Line of Section 13, Township 44 South, Range 39 East and the Central and Southern Florida Flood Control District Levee L-7.

It is agreed by the parties hereto that Sublessee will pay 735/3572nds of the costs of the construction and operation expenses of the said pumping station (including the pumps and motors, fuel tanks, engineering costs and facilities through the dike) and 735/3572nds of the costs of operating said pumping station facilities (including fuel, maintenance, repairs and labor).

Sublessor will send a bill monthly to Sublessee together with copies of the statements to Sublessor on which said bill is based for its proportionate share of the costs of the construction and/or maintenance costs of the operation of the pumping station during the term of this Sublease and Sublessee shall pay the same within fifteen (15) days of the receipt of said bill.

In the event either Sublessor or Sublessee deem it necessary either party shall have the right to start the pumps in the main pumping station, but in such event the party starting the pumps shall promptly notify the other party that it has started the pumps, and the party starting the pumps shall be responsible for the supervision of the pumps until the pumps are stopped and said party shall be responsible for any damage to the pumps by reason of the negligent operation of the same.

It is agreed that Sublessor, at its expense, will put an adequate culvert and riser on the South side of the main East-West drainage ditch of Sublessor, at a point approximately 165 feet West of Levee L-7. Sublessee agrees that it will at its expense put an adequate culvert and riser as prescribed by the Engineers plans on the North side of the main East-West drainage ditch of Sublessor's at a point approximately 165 feet West of Levee L-7. Sublessee agrees that it will put a culvert and riser at its expense at the intersection of the South line of the leased property and the Sublessee's main North-South drainage ditch. It is understood that either Sublessor or Sublessee will be able to control the pumping of water from their respective lands by use of said risers.

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It is agreed that Sublessor and Sublessee will each pay one-half of the costs of the excavation of the much and rock (4 yards per lineal foot with 2 yards on each side) from the said main pumping station West to the West line of said Section 13. It is agreed that Sublessor will pay the costs of excavating the muck down to rock from said point and thence approximately one-half (1/2) mile North along the West Section line of Section 13 to the intersection of the South Section line of Sections 11 and 12, Township 44 South, Range 39 East. (The top of said ditch shall be 42 feet wide). Sublessee will at its cost dig the rock from the said approximately one-half (1/2) mile last abovesaid and shall dig three (3) yards per lineal foot (1½ yards will be placed on each side and will be leveled and graded).

Sublessee shall have the right for a vehicle to travel to and from the main pumping station over the approximately one (1) mile of rock roads hereinabove identified running from the lands leased to Sublessee hereunder to the aforesaid main pumping station.

Sublessor shall abide by and perform all of the obligations imposed upon it except those imposed upon Sublessee herein, in the prime Trustees of the Internal Improvement Fund of Florida Lease and the Sublessor agrees to protect the Sublessee in its quiet and peaceful possession of the leased premises, so long as Sublessee is not in default under the terms of this Sublease.

In the event Sublessor fails to pay any rent due under the prime Trustees of the Internal Improvement Fund Lease, Sublessee shall have the right to pay the said rent and deduct the amounts so paid from the rent due hereunder.

20. INDEMNIFICATION TO TRUSTEES OF INTERNAL IMPROVEMENT FUND AND/OR THE STATE OF FLORIDA: Sublessee hereby covenants and agrees to investigate all claims of every nature at its own expense, and to indemnify, protect, defend, hold and save harmless the Trustees of the Internal Improvement Trust Fund and/or the State of Florida from any and all claims, actions, law suits and demands of any kind or nature arising out of this agreement.

21. LEASE FORMALITIES: This lease constitutes all of the agreements and understandings between the parties hereto pertaining to the leased premises. It is further agreed by the parties hereto that any modification of this Sublease must be made in writing and signed by all of the parties hereto.

This Lease executed in triplicate, each to be taken and received as an original.

SUBLEASE AGREEMENT

THIS AGREEMENT, made this 1st day of August, 1968, by and between S. N. KNIGHT & SONS, INC., a Florida corporation (Sublessor) and P. S. B. RANCH, INC. (Sublessee) and STEPHEN J. BARBERINO and PETER BARBERINO (Guarantors).

WITNESSETH:

That the Sublessor for and in consideration of the sum of $4,670.77, being rental paid in advance for the period from August 1, 1968, to July 31, 1970, does hereby lease for agricultural purposes only to the Sublessee for

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a period 19 years and 11 months from and after August 1, 1968, the following described lands in Palm Beach County, Florida, to-wit:

> All of Section 34 lying 350 feet westerly of the Westerly right-of-way line of the Central and Southern Florida Flood Control Levy L-7 and lying 5 feet south of the toe of the existing dike on the north side of said lands, in Township 44 South Range 39 East, Palm Beach County, Florida.

upon the following terms and conditions:

1. Sublessee agrees to obligate itself to pay to Sublessor annually in advance, as and for rental for said lands during the term hereof, the sum of $6.50 per acre per year for the 3rd and 4th years (said 3rd year commencing August 1, 1970); $9.10 per acre per year for the 5th and 6th years; $11.07 per acre per year for the 7th and 8th years; $12.92 per acre per year for the 9th and 10th years; $17.55 per acre per year for the 11th through the 15th years, and $20.80 per acre per year for the 16th through the 20th years. The rent due hereunder shall be paid 10 days prior to the date on which the corresponding installment of rental is payable under the terms of the Agricultural Lease recorded in Official Record Book 1670, Page 1522 of the Palm Beach County, Florida public records. Should the Sublessee fail to make the payment of rentals provided hereunder on or by the due date, or within 10 days from the date thereof, such failure shall constitute a default by the Sublessee and the Sublessor may, at its option, immediately terminate this lease.

2. This lease is made subject to all the terms and conditions of that certain Agricultural Lease #2341, dated August 1, 1968, by and between the Trustees of the Internal Improvement Fund of the State of Florida and S. N. KNIGHT & SONS, INC., which lease is recorded in Official Record Book 1670, Page 1522, of the Palm Beach County, Florida public records, and in accordance with paragraph 5 of said Agricultural Lease, this lease shall not become effective until same is formally approved by said Trustees.

3. It is mutually agreed that the number of acres contained in the lands encumbered by the within lease is 170 acres for the purpose of determining the rental due Sublessor hereunder for each year's rent commencing with the rental due August 1, 1970.

4. The Sublessee shall pay any and all drainage or special assessments or taxes of every sort and description assessed against the subleased lands which the Sublessor as Lessee under said Agricultural Lease is required to pay and shall pay the same within 10 days of the demand for payment by Sublessor and proof of same in writing by Sublessor.

5. The Sublessee shall make all improvements to the subleased lands which the Sublessor as Lessee under said Agricultural Lease is required to make to the subleased lands.

6. It is further understood and agreed that the failure of either party hereto to comply with its covenants and agreements hereunder or Sublessor fails to perform its obligations under said Agricultural Lease within 10

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days after being notified in writing by the other party of any such noncompliance then the party not so complying shall be deemed in default hereunder.

In the event of any such default by the Sublessee, the Sublessor may elect to terminate this lease and/or perform that which is required of Sublessee hereunder to the date of any such notice of noncompliance or termination and any costs born by Sublessor for such performance shall be considered as additional rental payable upon demand together with interest thereon at the rate 10% per annum from the date such costs are advanced by Sublessor.

In the event of any such default by Sublessor, Sublessee may elect to terminate this lease, or perform that which is required of Sublessor and any costs borne by Sublessee for such performance shall be payable upon demand together with interest thereon at the rate of 10% per annum from the date such costs are advanced by Sublessee, the Sublessee reserving the right to a credit against the next accruing rentals due hereunder for such unpaid costs and interest.

7. STEPHEN J. BARBERINO and PETER BARBERINO join herein for the purpose of personally guaranteeing compliance by the Sublessee of the terms and conditions of this Sublease to be performed by the Sublessee.

ASSIGNMENT OF AGRICULTURAL LEASE

THIS ASSIGNMENT of Agricultural Lease entered into this 5th day of May, 1969 by the between S. N. Knight

& Sons, Inc., a Florida corporation, hereinafter called Assignor and The Federal Land Bank of Columbia, a corporation organized and existing pursuant to an Act of Congress, hereinafter called Assignee.

WITNESSTH

WHEREAS on August 1, 1968 the Trustees of the Internal Improvement Fund of the State of Florida, as Lessor, did make, execute and deliver to S. N. Knight & Sons, Inc., as Lessee, its Agricultural Lease No. 2341, whereby Lessor did grant, lease and let exclusively to Lessee for agricultural purposes only, the following described lands in Palm Beach County, Florida, to-wit:

All of the South 50 chains of Section 11;

All of the South 62.125 chains of Section 12;

All of Sections 13, 14, 15, 22, 23, 26, 27 and 34; lying 350 feet westerly, as measured at right angles, from the westerly right of way line of Central and Southern Flood Control Levee L-7, in Township 44 South, Range 39 East, Palm Beach County, Florida, containing 3,742 acres, more or less

for a period of twenty (20) years from and after August 1, 1968, upon the terms and conditions more particularly set out in said Agricultural Lease incorporated by reference herein and which Lease is duly recorded among the public records of Palm Beach County, Florida, in Official Record Book 1670, at page 1522 and

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WHEREAS Assignor desires to borrow the sum of $2,500,000.00 from Assignee, and Assignee has agreed to make said loan, provided, among other things, that Assignor assign, transfer, set over and convey to Assignee its interest as Lessee in and to the above described Lease.

NOW, THEREFORE, for and in consideration of the sum of $1.00, receipt whereof is hereby acknowledged, and the making of the loan to Assignor in the amount of $2,500,000.00 by Assignee, Assignor does hereby assign, transfer, set over and convey unto Assignee, its successors and assigns, that certain Agricultural Lease above set out, and all its rights and interest thereunder.

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns, from date hereof for and during the remainder yet to come of the said term of 20 years, as set forth in said Lease, and Assignor hereby covenants and agrees to and with Assignee that said Lease is in full force and effect as of this date and that Assignor is not in default under any of the terms and conditions of said Lease to be kept and performed by it as Lessee.

PROVIDED ALWAYS, NEVERTHELESS that if Assignor shall pay or cause to have paid unto Assignee, its successors or assigns, the debt of $2,500,000.00 with interest thereon, as evidenced by promissory note of even date herewith, secured by mortgage encumbering lands owned in fee simple by Assignor, and shall perform all terms, covenants and conditions therein stated, this Assignment shall cease and determine and be null and void; otherwise it shall remain in full force and effect.

It is further covenanted and agreed by and between the parties hereto as follows:

(1) Neither this Assignment nor the acceptance thereof by Assignee shall release, relieve or in any way modify the obligations of Assignor under the terms and conditions of said Lease.

(2) Default by Assignor under the Terms and Conditions of said Lease shall constitute default under the promissory note and mortgage of even date herewith made by Assignor to Assignee.

(3) Assignee by the acceptance of this Assignment of Lease agrees that it will not exercise its right hereunder unless and until Assignor defaults under the terms of the promissory note and mortgage of even date herewith made by Assignor to Assignee.

This Assignment shall be binding upon Assignor, its successors and assigns.

TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA

AGRICULTURAL LEASE

No. 2376

THIS AGREEMENT AND LEASE made this 2nd day of June, 1969, by and between the TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA, hereinafter called the "Lessors," and W. P. M. INCORPORATED, a Florida

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corporation, its successors and assigns, with its principal place of business in Belle Glade, Florida, hereinafter called the "Lessee,"

WITNESSETH:

That the Lessors, for and in consideration of the sum of One Thousand Three Hundred Seventy-Nine and 60/100 Dollars ($1,379.60), being rental paid in advance for the first year of this lease, do hereby lease for agricultural purposes to the said Lessee for a period of fifteen (15) years from the date of this lease, with one (1) five (5) year renewal option as hereinafter provided, the following described lands in Palm Beach County, Florida, to-wit:

> That part of Section 11, Township 47 South, Range 38 East, lying west of the west right of way line of Levee L-6, containing 344.9 acres, more or less.

Upon the following terms and conditions:

1. Lessee agrees and obligates itself to pay to the Lessors annually in advance, as and for rental for said land, the sum of $4.00 per acre per year for the first and second years, and $12.00 per acre per year for the third and through the fifteenth year. Rental for the five year renewal option period to be based on revaluation of the land during the fifteenth year of the lease, subject to the approval of the Trustees. Should the Lessee fail to make the annual payment of rentals on or by the due date, or within thirty (30) days from the date thereof, such failure shall constitute a default by the Lessee and the Lessors may, at their option, immediately terminate this lease.

Any extension of time for payment of rental beyond the thirty (30) day grace period must be authorized by Lessors and penalty interest shall be charged at the rate of one percent (1%) per month or fraction thereof on the amount of tht delinquent rental beginning with the first day following the due date of the rental.

2. In the event Lessee wishes to exercise its option to extend said lease, notice in writing to Lessors shall be filed with said Lessors on or before six (6) months prior to the termination of the fifteenth (15th) year of the lease.

3. Lessee shall have the right to construct, install and maintain works for reclamation of the premises for agricultural use. Also, the right to construct and maintain any and all roads which may be required for the proper agricultural use of said premises.

4. This lease does not cover petroleum or petroleum products or minerals and does not give the right to Lessee to drill for or develop the same and Lessors specifically reserves the right to lease said lands for purposes of exploring and recovering oil and minerals by whatever means appropriate; provided, however, that Lessee named herein shall be fully compensated for any and all damages that might result to said Lessee by reason of such exploration and recovery operations.

5. That the Lessors or their duly authorized agents shall have the right at any and all times to inspect said lands and the works of the Lessee in any matter pertaining to this agreement and lease.

6. This lease shall not be assigned wholly or in part, or the lands described herein subleased wholly or in part without formal approval by the Trustees of the Internal Improvement Trust Fund of such assignment or sublease. The Lessors reserve the right to require assignee or sublessee to furnish financial statement and surety bond before assignment or sublease is approved and becomes legally effective.

7. The cultivation of sod for the purpose of sale or resale is expressly prohibited and the Lessee agrees that it will not cause or allow damage to the leased premises and no sod, soil, muck or other materials shall be removed from the leased premises.

8. It is agreed and covenanted that the removable improvements placed on the premises by the Lessee which do not become a part of the realty will remain the property of the Lessee and may be removed by Lessee upon termination of the lease, provided all sums due Lessors as rental for the premises are paid; otherwise, such equipment and improvements shall be and remain subject to lien for the sum due the Lessors.

9. The Lessee shall be responsible to the Lessors for the reasonable protection of said premises against fire and damage therefrom.

10. It is expressly agreed and understood that the Lessors assume no liability or obligation to the Lessee, its agents and tenants, with reference to the condition of the lands and water levels at any time.

11. The Lessee agrees to maintain any and all existing canals, drainage facilities and the like in as good condition as the same may be at the date of this lease, ordinary wear and tear excepted, and Lessee further agrees to pay any and all drainage or special assessments or taxes of every sort and description which are now or may be hereafter lawfully assessed and levied against the leased premises.

12. It is mutually agreed that the estimated acreage herein provided has been accepted by both parties for the purposes of calculating rentals due; provided, however, the Lessee may at its own expense furnish a survey by a registered land surveyor who is satisfactory to the Lessors, showing the acreage as calculated from said actual survey and said surveyed acreage shall thereafter fix the liability of the Lessee for the payment of future rentals with the next succeeding annual installment of rent herein provided.

13. The Lessee agrees to comply with all lawful requirements, rules, regulations, laws and ordinances of any legally constituted authority which in any way affect the leased premises.

14. All notices given to the Lessee may be served by mailing the same to: W. P. M. Incorporated, c/o Stone, Bittel, Langer, Blass and Corrigan, 400 City National Bank Building, Miami, Florida, 33130, unless another address is designated in writing by the Lessee to the Lessors.

15. Should the Lessee breach any of the covenants, terms or conditions of this lease, other than the payment

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of rent, the Lessors may at their option, give written notice to the Lessee to remedy such breach within ninety (90) days and in the event of failure by the Lessee to so remedy the breach within ninety (90) days to the satisfaction of the Lessors, this lease shall be void and of no further force and effect.

16. It is agreed that failure to make payments of the rentals herein to be paid as and when said rentals are due and payable or breach of any covenant of this lease will constitute default and the leased premises and all appurtenances related to or connected with the land shall revert to and vest in the Lessors. A written notice from the Lessors reciting notice of default or breach will be sufficient to effectuate and evidence such reversion and terminate the lease, except as otherwise provided by paragraphs 1 and 15 of the lease.

17. It is agreed and understood that the leased premises will be actively utilized for agricultural purposes only and the land or any part thereof will not be allowed to remain idle for the purpose of receiving agricultural subsidies.

STATE OF FLORIDA
BOARD OF TRUSTEES OF THE INTERNAL
IMPROVEMENT TRUST FUND

SAND LEASE AGREEMENT

NO. 2381

THIS CONTRACT, LEASE AND PERMIT, made and entered into this 1st day of June, A. D. 1969, by and

between the State of Florida Board of Trustees of the Internal Improvement Trust Fund, hereinafter called Lessors and Allied Electrical Co., Inc., a Florida corporation, of Monroe County, Florida, hereinafter called Lessee,

WITNESSETH: That Lessors for and in consideration of the sum of Twenty Cents (20¢) per cubic yard and other considerations hereinafter set forth, do hereby lease to Lessee, for a period of three (3) years from June 1, 1969, the right, leave, license and permit to mine, dredge and take sand for commercial purposes from two (2) parcels of sovereignty land lying in Monroe County, said parcels being located as follows:

Parcel No. 1

Lying adjacent to Boca Chica Channel in Section 1, Township 68 South, Range 25 East, said parcel being more particularly described as follows:

Begin on the Easterly line of Boca Chica Channel at a point 1000 feet Southerly from the shore line of Boca Chica Key, thence continue Southerly 1000 yards along the said Easterly line of Boca Chica Channel, thence Easterly 300 yards, thence Northerly 1000 yards, thence Westerly 1000 yards to point of beginning.

Parcel No. 2

Lying Northeasterly of the Northwest Channel and approximately 3.50 miles Northwest of Key West, said parcel to be 2.0 miles parallel to the Northeasterly line of said Northwest Channel and 0.5 miles in width.

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Together with right, leave, license and permit to enter into and upon the territory with necessary equipment to mine, dredge and take sand from the above described property and convey to Lessee the title to all sand so taken and paid for in accordance with this lease. Sand is defined as unconsolidated detrital rock material of a size range between 2 mm and 1/16 mm in diameter together with any minor inclusion of smaller or larger shell or rock material. It is understood sand in its natural occurence may contain minor portions of shell or rock particles.

The right, leave, license and permit hereby granted is upon the following express terms and conditions.

1. That Lessee in its operations upon said territory and in taking sand therefrom shall not in any manner interfere with navigation of waters of said territory or the public's legitimate use of said waters, nor does this lease convey any right or rights to Lessee to go over, upon, on or under any privately owned upland property.

2. That said Lessee shall not dredge or take sand from any locality where the taking of same would injure or damage any private or public structure or property.

3. That accounting and payment for all sand taken shall be made at the expiration of each three (3) months' period, each period ending on the last calendar day of March, June, September and December. A quarterly report form, furnished by Lessors, shall be completed by Lessee, indicating yardage taken and sum due and accompany each payment. In no case shall the time of accounting and/or remitting of payment due for sand taken in any one quarter be later than the 10th day of the succeeding month

following the end of each quarter. In the event sand is not taken during a three months' period said quarterly report shall be filed with Lessors at the end of the period as set forth above.

4. That in accounting and paying for sand so taken, the Lessors agree to take and accept verified shipping weights where such sand is weighed for shipping by rail, or otherwise, or verified standard weights where such sand is used or sold without shipping.

5. That Lessee shall pay to Lessors the sum of Two Hundred and Fifty Dollars ($250.00) annually in advance on or before each anniversary date of this lease as annual minimum required for said lease.

6. That Lessee shall execute and deliver to Lessors as a part of this contract, a good and sufficient bond in the sum of Three Thousand and 00/100 Dollars, ($3,000.00), conditioned upon Lessees well and faithful accounting and paying to Lessors for all sand taken under this contract, and upon faithful performance of the terms and conditions of this contract, lease and permit. Bond can be substituted by Lessee depositing with Lessors securities, satisfactory to Lessors, in the sum of Three Thousand and 00/100 Dollars, ($3,000.00), or by giving bond with a reputable Surety Company, authorized to do business in Florida.

7. That should Lessee at any time fail to abide by and carry out any terms and conditions of this lease, contract and permit, in the determination of Lessor, then and in that event Lessors shall have the right to immediately cancel the same and stop further taking of sand hereunder. Provided, however, that Lessors reserve unto themselves

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the right to cancel this lease for any reason upon giving Lessee sixty (60) days notice thereof in writing, and Lessee in accepting this lease agrees to hold the Lessors harmless from any and all damages which may arise, because of such cancellation.

8. Lessee shall at all times during the term of this lease maintain and keep adequate records to show the correct amounts of sand taken under this lease and Lessors or their duly authorized agents shall have the right at any and all times to inspect the books and works of Lessee in any matters pertaining to this contract, lease and permit.

9. This lease and permit is not exclusive, but Lessors reserve the right, at any time to grant similar or other permits to other parties covering the same territory herein described.

10. This contract, lease and permit shall not abridge or limit the rights and privileges heretofore granted by the Lessors in any similar contract, lease or permit covering any or all of the above described territory.

11. That Lessee hereby covenants and agrees to investigate all claims of every nature at its own expense, and to indemnify, protect, defend, hold and save harmless the State of Florida Board of Trustees of the Internal Improvement Trust Fund and/or the State of Florida from any and all claims, actions, lawsuits and demands of any kind or nature arising out of this lease.

WITNESSETH FURTHER: That Lessee does hereby accept this contract, lease and permit upon terms and conditions herein specified and set forth, and does hereby

promise, obligate and covenant to observe and abide by all the terms and conditions hereof, and to make full accounting and payments promptly as provided in this instrument.

Executed in duplicate, each of the parties hereto retaining an original copy hereof.

STATE OF FLORIDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

GRAZING LEASE

NO. 2394

THIS AGREEMENT AND LEASE made this 1st day of June A. D. 1969, by and between the State of Florida Board of Trustees of the Internal Improvement Trust Fund, hereinafter called the "Lessor" and GLEN DAVIS, 421 South Park Street, Okeechobee, Florida, hereinafter called the "Lessee", WITNESSETH:

That the Lessor, for and in consideration of the payment of the annual rental hereinafter provided for, does hereby lease for grazing purposes only to the said Lessee for a period of three (3) years from the date first above written, the following land in the County of Okeechobee, and State of Florida, to-wit:

Begin at NW Corner of Section 5 Township 38 South, Range 35 East, run South 1700.60 feet, for a Point of Beginning;

thence run South 81° 21′ East, 435.1 feet;
thence South 46° 36′ East, 208.20 feet;
thence South 8° 05′ East, 317.4 feet;
thence South 5° 21′ West, 318.0 feet;
thence South 1° 11′ East, 170.0 feet;
thence South 29° 36′ East, 853.2 feet;
thence South 46° 22′ East, 416.8 feet;
thence South 47° 09′ East, 310.3 feet;
thence South 60° 21′ East, 353.1 feet;
thence North 71° 51′ East, 126.6 feet;
thence South 69° 04′ East, 105.7 feet;
thence North 2455.90 feet;
thence run West 2387.53 feet to P. O. B.
Containing 53.64 acres, lying and being in Section 5, Township 38 South, Range 35 East, Okeechobee County, Florida.

upon the following terms and conditions:

1. The Lessee agrees to pay to the Lessor for the use of said premises Three and 00/100 Dollars ($3.00) per acre per annum, due and payable in advance, the first annual payment being One Hundred Sixty and 92/100 Dollars ($160.92) which is to be paid to the Lessor upon delivery of this lease. Should the Lessee fail to make the annual payment of rental on the due date, or within forty-five (45) days from the date thereof, such failure shall constitute a default by the Lessee and the Lessor may, at its option, immediately terminate this lease. Any extension of time for payment of rental beyond the forty-five (45) day grace period must be authorized by the Lessor and penalty interest shall be charged at the rate of one percent (1%) per month on the amount of the delinquent rental beginning with the first day fol-

lowing the expiration of the forty-five (45) day grace period.

2. This lease does not cover petroleum or petroleum products or minerals and does not give the right to Lessee to drill for or develop the same and Lessor specifically reserves the right to lease said lands for purposes of exploring and recovering oil and minerals by whatever means appropriate provided, however, that Lessee named herein shall be fully compensated for any and all damages that might result to said Lessee by reason of such exploration and recovery operations.

3. The State of Florida Board of Trustees of the Internal Improvement Trust Fund and its duly authorized representatives shall have the right at all times to inspect the premises and works of the Lessee.

4. This lease shall not be assigned wholly or in part, or the lands described herein subleased wholly or in part without formal approval of the assignment of sublease, including all terms of the same, by the State of Florida Board of Trustees of the Internal Improvement Trust Fund. The Lessor reserves the right to require assignee or sublessee to furnish financial statement and surety bond before assignment of sublease is approved and becomes legally effective.

5. Lessee agrees that they will not do or suffer any act which will result in damage to the leased premises.

6. It is agreed and covenanted that the removable improvements placed on the premises by the Lessee which do not become a part of the realty will remain the property

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of the Lessee and may be removed by Lessee upon termination of the lease provided all sums due Lessor as rental for the premises are paid; otherwise, such equipment and improvements shall be and remain subject to lien for the sums due the Lessor.

7. The Lessee shall be responsible to the Lessor for the reasonable protection of said premises against fire and damage therefrom.

8. It is expressly agreed and understood that the Lessor assumes no liability or obligation to the Lessee, its agents and tenants, with reference to the condition of the lands and water levels at any time.

9. The Lessee agrees to maintain any and all existing canals, drainage facilities and the like in as good condition as the same may be at the date of this lease, ordinary wear and tear excepted, and Lessee further agrees to pay any and all drainage or special assessments or taxes of every sort and description which are now or may be hereafter lawfully assessed and levied against the leased premises.

10. Lessee agrees that they will not cause or allow damage to the leased premises and no soil, sod, muck or other materials shall be removed from the leased premises.

11. Lessee agrees that all permanent type improvements placed in or on the premises by the Lessee shall become a part and parcel of the realty and vest in the Lessor upon termination of the lease.

12. It is agreed that failure to make payments of the rentals herein agreed to be paid as and when said

rentals are due and payable or breach of any covenant of this lease will constitute default and the leased premises and all appurtenances related to or connected with the land shall revert to and vest in the Lessor. A resolution of the Lessor reciting notice of default or breach will be sufficient to effectuate and evidence such revision and terminate the lease, except as otherwise provided by provision 15 of the lease.

13. The Lessee agrees to comply with all lawful requirements, rules, regulations, laws and ordinances of any legally constituted authority which in any way affect the leased premises.

14. All notices to the Lessee may be served by mailing the same to Glen Davis, 421 South Park Street, Okeechobee, Florida, unless another address is designated in writing by the Lessee to the Lessor.

15. Should the Lessee breach any of the covenants, terms or conditions of this lease, other than the payment of rent, the Lessor may, at its option, give written notice to the Lessee to remedy such breach within ninety (90) days and in the event of failure by the Lessee to so remedy the breach to the satisfaction of the Lessor, this lease shall be void and of no further force and effect.

16. This lease shall be subject to termination by the Lessor upon written notice of at least ninety (90) days before such termination.

17. That Lessee hereby covenants and agrees to investigate all claims of every nature at its own expense, and to indemnify, protect, defend, hold and save harmless

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the State of Florida Board of Trustees of the Internal Improvement Trust Fund and/or the State of Florida from any and all claims, actions, lawsuits and demands of any kind or nature arising out of this lease.

STATE OF FLORIDA
BOARD OF TRUSTEES OF THE
INTERNAL IMPROVEMENT TRUST FUND

GRAZING LEASE

No. 2402

THIS AGREEMENT AND LEASE made and entered into on this 5th day of December, A. D. 1969, between the STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND, hereinafter called the "Lessor" and T. M. BECK, Moore Haven, Florida, hereinafter called the "Lessee", WITNESSETH:

That for and in consideration of the payment of the annual rental hereinafter provided for and the other terms and conditions stated herein, the Lessor does hereby let and lease to the said Lessee, his heirs and assigns, exclusively for grazing purposes, the following described land situate, lying and being in the County of Glades and State of Florida, more particularly described as follows, to-wit:

Approximately 100 acres of unsurveyed lake bottom land in the Southeast Quarter (SE¼) of Section 28, Township 40 South, Range 32 East, lying between State Road #78 and the old Lakeport Road.

TO HAVE AND TO HOLD the above described land unto the Lessee for a period of Three (3) years from the 5th day of December 1969, unless this lease be sooner cancelled as hereinafter provided.

The terms and conditions on which this lease is executed are as follows:

1. The Lessee agrees to pay to the Lessor for the use of said premises the sum of Three Hundred and 00/100 Dollars, ($300.00), per annum, based on an annual rental of Three ($3.00) per acre per annum, due and payable in advance. The annual periods for the life of this lease shall be on the 5th day of December. Should the Lessee fail to make the annual payment of rental on or by the due date, or within forty-five (45) days from and after the date thereof, such failure shall constitute a default by the Lessee and the Lessor may, at their option, immediately terminate this lease. Any extension of time for payment of rental beyond forty-five (45) day grace period must be authorized by Lessor with penalty interest charged at the rate of one per cent (1%) per month or fraction thereof on the amount of the delinquent rental beginning with the first day following the expiration of the forty-five (45) day grace period.

2. The said Lessee, his heirs and assigns, shall have the full and free rights of ingress and egress to, from and upon the said lands for a period ending December 4, 1972, for the purpose of utilizing said land for grazing purposes only, and does not include the exclusive right to hunt or fish.

3. The Lessee will not without the previous written consent of the Lessor or their successors in office, assign,

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sublease, or part with the possession or control of the said premises or any part thereof.

4. The said Lessee, his heirs, assigns, agents and employees will do as little injury and damage as possible to the timber or any improvements that may be on said lands and will make compensation to the Lessor for all injury and damage so done.

5. The Lessor or their duly authorized agents shall have the right at any and all times to inspect said lands and the works of the Lessee in any matter pertaining to this agreement and lease.

6. This lease does not cover petroleum or petroleum products or minerals and does not give the right to Lessee to drill for or develop the same and Lessor specifically reserves the right to lease said lands for purposes of exploring and recovering oil and minerals by whatever means appropriate provided, however, that Lessee named herein shall be fully compensated for any and all damages that might result to said Lessee by reason of such exploration and recovery operations.

7. It is agreed and covenanted that the removable improvements placed on the premises by the Lessee which do not become a part of the realty will remain the property of the Lessee and may be removed by Lessee upon termination of the lease, provided all sums due Lessor as rental for the premises are paid; otherwise, such equipment and improvements shall be and remain subject to lien for the sum due the Lessor.

8. The Lessee shall be responsible to the Lessor for the reasonable protection of said premises against fire and damage therefrom.

9. It is expressly agreed and understood that the Lessor assume no liability or obligation to the Lessee, its agents and tenants, with reference to the conditions of the lands and water levels at any time.

10. The Lessee agrees to maintain any and all existing canals, drainage facilities and the like in as good condition as the same may be at the date of this lease, ordinary wear and tear excepted, and Lessee further agrees to pay any and all drainage or special assessments or taxes of every sort and description which are now or may be hereafter lawfully assessed against the leased premises.

11. Lessee agrees that it will not cause or allow damage to the leased premises and no soil, sod, muck or other materials shall be removed from the leased premises.

12. Lessee agrees that all permanent type improvements placed in or on the premises by the Lessee shall become a part and parcel of the realty and vest in the Lessors upon termination of the lease.

13. It is agreed that failure to make payments of the rentals herein agreed to be paid or breach of any covenants of this lease will constitute default and the leased premises and all appurtenances related to or connected with the land shall revert to and vest in the Lessor. A resolution of the Lessor reciting notice of default or breach will be sufficient to effectuate and evidence such reversion and terminate

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the lease, except as otherwise provided by paragraphs 1 and 16 of the lease.

14. The Lessee agrees to comply with all lawful requirements, rules, regulations, laws and ordinances or any legally constituted authority which in any way affect the leased premises.

15. All notices given to the Lessee may be served by mailing the same to him at Route 2, Box 16, Moore Haven, Florida, unless another address is designated in writing by the Lessee to the Lessor.

16. This lease shall be subject to termination by the Lessor upon written notice of at least ninety (90) days before such termination.

17. That Lessee hereby covenants and agrees to investigate all claims of every nature at its own expense, and to indemnify, protect, defend, hold and save harmless the State of Florida Board of Trustees of the Internal Improvement Trust Fund and/or the State of Florida from any and all claims, actions, lawsuits and demands of any kind or nature arising out of this lease.

STATE OF FLORIDA
BOARD OF TRUSTEES OF THE
INTERNAL IMPROVEMENT TRUST FUND

GRAZING LEASE

No. 2403

THIS AGREEMENT AND LEASE made and entered into on this 5th day of December, A. D. 1969, between the

STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND, hereinafter called the "Lessor" and RAY D. CHAMBERLAIN, Clewiston, Florida, hereinafter called the "Lessee", WITNESSETH:

That for and in consideration of the payment of the annual rental hereinafter provided for and the other terms and conditions stated herein, the Lessor does hereby let and lease to the said Lessee, his heirs and assigns, exclusively for grazing purposes, the following described land situate, lying and being in the County of Glades and State of Florida, more particularly described as follows, to-wit:

A parcel of reclaimed lake bottom lying between the State meander line and the southerly right of way line of Levee L-D1; said parcel being adjacent to fractional Section 17, Township 42 South, Range 33 East, Glades County, Florida, more particularly described as follows:

Begin at a point of intersection with the southerly right of way line of Levee L-D1, as described in Trustees' Dedication 23047, and the westerly most meander line of Section 17, as shown on the State Township Plat of Township 42 South, Range 33 East as surveyed by L. B. Merriam in April 1918; thence following the meander of said section in a southerly, southeasterly and northeasterly direction to a point of intersection with the southerly right of way line of Levee L-D1, thence northwesterly along said right of way line to the point of beginning. Containing 83.35 acres, more or less.

Aforedescribed parcel is subject, however, to a power line easement to the Glades Electric Co-op as described in Trustees' Easement Number 23089.

TO HAVE AND TO HOLD the above described land unto the Lessee for a period of Three (3) years from the 5th day of December 1969, unless this lease be sooner cancelled as hereinafter provided.

The terms and conditions on which this lease is executed are as follows:

1. The Lessee agrees to pay to the Lessor for the use of said premises the sum of Two Hundred Fifty and 05/100 Dollars, ($250.05), per annum, based on an annual rental of Three and 00/100 Dollars, ($3.00), per acre per annum, due and payable in advance. The annual periods for the life of this lease shall be on the 5th day of December. Should the Lessee fail to make the annual payment of rental on or by the due date, or within forty-five (45) days from and after the date thereof, such failure shall constitute a default by the Lessee and the Lessor may, at their option, immediately terminate this lease. Any extension of time for payment of rental beyond forty-five (45) day grace period must be authorized by Lessor with penalty interest charged at the rate of one per cent (1%) per month or fraction thereof on the amount of the delinquent rental beginning with the first day following the expiration of the forty-five (45) day grace period.

2. The said Lessee, his heirs and assigns, shall have the full and free rights of ingress and egress to, from and upon the said lands for a period ending December 4, 1972,

for the purpose of utilizing said land for grazing purposes only, and does not include the exclusive right to hunt or fish.

3. The Lessee will not without the previous written consent of the Lessor or their successors in office, assign, sublease, or part with the possession or control of the said premises or any part thereof.

4. The said Lessee, his heirs, assigns, agents and employees will do as little injury and damage as possible to the timber or any improvements that may be on said lands and will make compensation to the Lessor for all injury and damage so done.

5. The Lessor or their duly authorized agents shall have the right at any and all times to inspect said lands and the works of the Lessee in any matter pertaining to this agreement and lease.

6. This lease does not cover petroleum or petroleum products or minerals and does not give the right to Lessee to drill for or develop the same and Lessor specifically reserves the right to lease said lands for purposes of exploring and recovering oil and minerals by whatever means appropriate provided, however, that Lessee named herein shall be fully compensated for any and all damages that might result to said Lessee by reason of such exploration and recovery operations.

7. It is agreed and covenanted that the removable improvements placed on the premises by the Lessee which do not become a part of the realty will remain the property of the Lessee and may be removed by Lessee upon termina-

tion of the lease, provided all sums due Lessor as rental for the premises are paid; otherwise, such equipment and improvements shall be and remain subject to lien for the sum due the Lessor.

8. The Lessee shall be responsible to the Lessor for the reasonable protection of said premises against fire and damage therefrom.

9. It is expressly agreed and understood that the Lessor assume no liability or obligation to the Lessee, its agents and tenants, with reference to the conditions of the lands and water levels at any time.

10. The Lessee agrees to maintain any and all existing canals, drainage facilities and the like in as good condition as the same may be at the date of this lease, ordinary wear and tear excepted, and Lessee further agrees to pay any and all drainage or special assessments or taxes of every sort and description which are now or may be hereafter lawfully assessed against the leased premises.

11. Lessee agrees that it will not cause or allow damage to the leased premises and no soil, sod, muck or other materials shall be removed from the leased premises.

12. Lessee agrees that all permanent type improvements placed in or on the premises by the Lessee shall become a part and parcel of the realty and vest in the Lessors upon termination of the lease.

13. It is agreed that failure to make payments of the rentals herein agreed to be paid or breach of any covenants of this lease will constitute default and the leased premises

and all appurtenances related to or connected with the land shall revert to and vest in the Lessor. A resolution of the Lessor reciting notice of default or breach will be sufficient to effectuate and evidence such reversion and terminate the lease, except as otherwise provided by paragraphs 1 and 16 of the lease.

14. The Lessee agrees to comply with all lawful requirements, rules, regulations, laws and ordinances or any legally constituted authority which in any way affect the leased premises.

15. All notices given to the Lessee may be served by mailing the same to him at Route 2, Box 216, Clewiston, Florida, unless another address is designated in writing by the Lessee to the Lessor.

16. This lease shall be subject to termination by the Lessor upon written notice of at least ninety (90) days before such termination.

17. That Lessee hereby covenants and agrees to investigate all claims of every nature at its own expense, and to indemnify, protect, defend, hold and save harmless the State of Florida Board of Trustees of the Internal Improvement Trust Fund and/or the State of Florida from any and all claims, actions, lawsuits and demands of any kind or nature arising out of this lease.

STATE OF FLORIDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

GRAZING LEASE

NO. 2411

THIS AGREEMENT AND LEASE made and entered into on this 21st day of January, A.D. 1970, between the STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND, hereinafter called the "Lessor" and LYKES BROS. INC., a Florida Corporation, 512 North Florida Avenue, Tampa, Florida, hereinafter called the "Lessee", WITNESSETH:

That for and in consideration of the payment of the annual rental hereinafter provided for and the other terms and conditions stated herein, the Lessor does hereby let and lease to the said Lessee, its successors and assigns, exclusively for grazing purposes, the following described land situate, lying and being in the County of Glades and State of Florida, more particularly described as follows, to-wit:

Lots 1, 2, 3 and 4 of Section 34, Township 40 South, Range 32 East, containing 195.11 acres, more or less.

TO HAVE AND TO HOLD the above described land unto the Lessee for a period of Three (3) years from the 21st day of January 1970, unless this lease be sooner cancelled as hereinafter provided.

The terms and conditions on which this lease is executed are as follows:

1. The Lessee agrees to pay to the Lessor for the use of said premises the sum of Seven Hundred Eighty and 44/100 Dollars, ($780.44), per annum, based on an annual rental of Four Dollars ($4.00) per acre per annum, due and payable in advance. The annual periods for the life of this lease shall be on the 21st day of January. Should the Lessee fail to make the annual payment of rental on or by the due date, or within forty-five (45) days from and after the date thereof, such failure shall constitute a default by the Lessee and the Lessor may, at their option, immediately terminate this lease. Any extension of time for payment of rental beyond forty-five (45) day grace period must be authorized by Lessor with penalty interest charged at the rate of one per cent (1%) per month or fraction thereof on the amount of the delinquent rental beginning with the first day following the expiration of the forty-five (45) day grace period.

2. The said Lessee, its successors and assigns, shall have the full and free rights of ingress and egress to, from and upon the said lands for a period ending January 20, 1973, for the purpose of utilizing said land for grazing purposes only, and does not include the exclusive right to hunt or fish.

3. The Lessee will not without the previous written consent of the Lessor or their successors in office, assign, sublease, or part with the possession or control of the said premises or any part thereof.

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4. The said Lessee, its successors, assigns, agents and employees will do as little injury and damage as possible to the timber or any improvements that may be on said lands and will make compensation to the Lessor for all injury and damage so done.

5. The Lessor or their duly authorized agents shall have the right at any and all times to inspect said lands and the works of the Lessee in any matter pertaining to this agreement and lease.

6. This lease does not cover petroleum or petroleum products or minerals and does not give the right to Lessee to drill for or develop the same and Lessor specifically reserves the right to lease said lands for purposes of exploring and recovering oil and minerals by whatever means appropriate provided, however, that Lessee named herein shall be fully compensated for any and all damages that might result to said Lessee by reason of such exploration and recovery operations.

7. It is agreed and covenanted that the removable improvements placed on the premises by the Lessee which do not become a part of the realty will remain the property of the Lessee and may be removed by Lessee upon termination of the lease, provided all sums due Lessor as rental for the premises are paid; otherwise, such equipment and improvements shall be and remain subject to lien for the sum due the Lessor.

8. The Lessee shall be responsible to the Lessor for the reasonable protection of said premises against fire and damage therefrom.

9. It is expressly agreed and understood that the Lessor assume no liability or obligation to the Lessee, its agents and tenants, with reference to the conditions of the lands and water levels at any time.

10. The Lessee agrees to maintain any and all existing canals, drainage facilities and the like in as good condition as the same may be at the date of this lease, ordinary wear and tear excepted, and Lessee further agrees to pay any and all drainage or special assessments or taxes of every sort and description which are now or may be hereafter lawfully assessed against the leased premises.

11. Lessee agrees that it will not cause or allow damage to the leased premises and no soil, sod, muck or other materials shall be removed from the leased premises.

12. Lessee agrees that all permanent type improvements placed in or on the premises by the Lessee shall become a part and parcel of the realty and vest in the Lessor upon termination of the lease.

13. It is agreed that failure to make payments of the rentals herein agreed to be paid or breach of any covenants of this lease will constitute default and the leased premises and all appurtenances related to or connected with the land shall revert to and vest in the Lessor. A resolution of the Lessor reciting notice of default or breach will be sufficient to effectuate and evidence such reversion and terminate the lease, except as otherwise provided in Paragraphs 1 and 16 of the lease.

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14. The Lessee agrees to comply with all lawful requirements, rules, regulations, laws and ordinances or any legally constituted authority which in any way affect the leased premises.

15. All notices given to the Lessee may be served by mailing the same to Lykes Bros. Inc., P. O. Box 2879, Tampa, Florida, unless another address is designated in writing by the Lessee to the Lessor.

16. This lease shall be subject to termination by the Lessor upon written notice of at least ninety (90) days before such termination.

17. That Lessee hereby covenants and agrees to investigate all claims of every nature at its own expense, and to indemnify, protect, defend, hold and save harmless the State of Florida Board of Trustees of the Internal Improvement Trust Fund and/or the State of Florida, from any and all claims, actions, lawsuits and demands of any kind or nature arising out of this lease.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Appendix to Appellee's Supplemental Brief was delivered by mail this —— day of May, 1971, to: THE HONORABLE ROBERT L. SHEVIN, Attorney General, State of Florida, The Capitol, Tallahassee, Florida; and MARION E. SIBLEY, ESQ., Special Assistant to Attorney General, 605 Lincoln Road, Miami Beach, Florida; and PHILLIP S. BENNETT, ESQ., General Counsel, Trustees of Internal Improvement Trust Fund, Elliott Building, Tallahassee, Florida; and RIVERS BUFORD, JR., ESQ., Counsel, Board of Education of the State of Florida, The Capitol, Tallahassee, Florida.

Of Counsel for Appellee

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in the
Supreme Court
of the
United States

OCTOBER TERM, 1971

No. 71-1505

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, et al., as and constituting the members of the BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND and the BOARD OF EDUCATION of the State of Florida,

Petitioners,

vs.

AEROJET-GENERAL CORPORATION,

Respondent.

REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

INTRODUCTION

The Petitioners are the Cabinet of the State of Florida, and constitute the membership of the State of Florida's Board of Trustees of the Internal Improvement Trust Fund (hereinafter "Trustees") and the State of Florida's Board

of Education (hereinafter "Board of Education"). They were Defendants in the District Court, and Appellants in the United States Court of Appeals, Fifth Circuit. They will be referred to herein collectively as "Petitioners". AEROJET-GENERAL CORPORATION was Plaintiff in the District Court, and Appellee in said Court of Appeals. AEROJET-GENERAL CORPORATION will be designated herein "Respondent".

References to the record are by Record Volumes bound together as Petitioners' Appendix in this Court. There are three record volumes within the Appendix, which are separately paginated. References thereto will be prefaced by the letter R., followed by the appropriate volume and page number. All emphasis herein is supplied unless otherwise noted.

STATEMENT OF THE CASE

As to the facts which are properly a part of the record herein, Petitioners' Statement of the Case is correct, though incomplete in the following particulars:

On December 21, 1961, Petitioners and Respondent executed a Lease With Option to Purchase (R. Vol. I, pp. 40-47, hereinafter referred to as "Lease-Option" or "contract"). By that instrument, Petitioners leased to Respondent for ten years approximately 25,313 acres of specifically described real estate located in Dade County, Florida and granted Respondent an option to purchase same for $50.00 per acre. (R. Vol. I, pp. 41-42). The Petitioners owned fee title to the land in their respective official capacities.

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Respondent was the high bidder upon the Lease-Option, pursuant to statutory[1] notice of bids and public sale. The Petitioners, having the right to reject this bid,[2] accepted it. Thus ensued the Lease-Option, under which Respondent covenanted (i) to pay annual rental of $2.50 per acre in advance, commencing on the date of execution and continuing each year thereafter, (ii) to pay annually to the appropriate local governmental agencies a sum of money equal to, but in lieu of, the amount of ad valorem real estate taxes which would be owed on the leased lands if Respondent held title thereto (lands owned by state agencies being tax immune), together with any valid special assessments levied upon the property (hereinafter referred to as "in lieu taxes"), and (iii) to commence, within twelve months after execution of the Lease-Option, construction and installation of a manufacturing plant and associated facilities upon the leased lands or upon lands contiguous thereto owned, leased or controlled by Respondent and in so doing to utilize the leased lands in conjunction with the operation of such manufacturing plant and associated facilities. (R. Vol. I, pp. 42-44)

The Lease-Option provided that the lease and the option could be terminated prior to the expiration of the ten year term in the event of Respondent's default in any of the Lease-Option provisions, *upon Petitioners' giving written notice of such default and an opportunity to Respondent to cure any such default* within 60 days of such notice. (R. Vol. I, pp. 35) Further, the contract provided for termination of all lease covenants upon exercise by Respondent of the purchase option, except that a specific covenant against land speculation continued in effect for

[1] *Fla. Stat.* §§ 270.07, 08 (1961)
[2] *Fla. Stat.* § 270.09(3) (1961)

the full 10 year term, regardless of the date of exercise of option. (R. Vol. I, p. 35) *At no time prior to the exercise of the option in September, 1969, did Petitioners ever give Respondent notice of any alleged default under the contract, nor was any declaration of default made by Petitioners during the life of the lease through and including exercise of the option.* (R. Vol. I, pp. 10-12)

To the contrary, during the term of the lease through and including the exercise of option Petitioners accepted the annual rental of $63,272.50 paid by Respondent in advance, for a total rental paid to Petitioners of $506,180.00. (R. Vol. I, pp. 9, 13, 23) Dade County and the State's other governmental arms with ad valorem taxation authority have been paid and have accepted all in lieu tax payments due under the Lease-Option. (R. Vol. I, pp. 9, 10, 13, 23) Respondent complied with its covenant to construct and install a manufacturing plant and associated facilities. (R. Vol. I, pp. 25, 27 R. Vol. II, pp. 7-33) Respondent made a total capital investment for buildings and equipment of $21,200,000.00 (R. Vol. I, pp. 10, 11, 13; R. Vol. II, pp. 10-11, 17) It invested an additional $7,100,000.00 in the purchase of land contiguous to the lease-optioned land, and which together form the entire Aerojet tract. (R. Vol. I, pp. 10, 11, 13, R. Vol. II, p. 10).

As is noted in the certiorari petition (p. 8), the District Court required the parties to submit memoranda on the issues of Petitioners' power to enter into a lease-option and the validity of the notice for bids. In connection with such memoranda, Respondent filed before the District Court certain documents executed by Petitioners, the authenticity and genuineness of which are agreed. (R. Vol. III, pp. 2-207) These forty-five documents are conveyances by the Petitioners of less than the fee interest of lands held by

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them, (e.g., R. Vol. III, pp. 77, 95, 114, 152). They are variously denominated "lease", "easement grant", "permit", "right of way", and "lease-purchase agreement". Some contain "options", e.g., R. Vol. III, pp. 95, 121, 138. They convey interests in realty which are not *specifically* authorized by statute, and the terms of such conveyances are often for many years, some are in perpetuity. (R. Vol. III, pp. 8, 47, 109, 142)

Much of Petitioners' Statement of the Case is concerned with matter not properly in this record. These "facts" have been bootstrapped into the record by means of a procedure Petitioners call "Motion To Remand The Cause With Leave To File Motion To Set Aside Judgment In The Lower Court", filed after the U.S. Court of Appeals, Fifth Circuit, had determined their appeal adversely to Petitioners. No procedural authority for this motion has yet been cited, and the motion was filed after the time permitted by rule for rehearing petitions.[3] Essentially, the motion attempted to secure the Court of Appeals' order directing the District Court to favorably entertain a motion to set aside the judgment which had just been affirmed; and in support of the request Petitioners argued things which were entirely *dehors* the record. In response to the motion, Respondent attached certain other material which is also *dehors* the record, saying:

> . . . We therefore resort to some non-record material ourselves, without contending that the following facts should be any more a part of this record than those asserted by [Petitioners] . . . [I]f [Petitioners] are to be allowed to inject ex-

[3]The Fifth Circuit had extended the time for filing rehearing petition in the cause, but no authority had been given to file this "Motion To Remand, etc."

> traneous matter into the record at this point, and if we are forced to rebut arguments based upon it before this Court and possibly before the Supreme Court of the United States, then candor requires us to state that we want at least to have our own extraneous matter in the record, too. All of it should be stricken, however, for it is all patently improper under the Federal Rules of Appellate Procedure. (R. Vol. III, p. 96)

The Court of Appeals denied the "Motion to Remand, etc." without opinion, and so did not specifically strike or refuse to strike from the record the matter referred to above. To the extent that these post-opinion alleged factual matters are of any significance, the statement of them by Petitioners should be corrected as follows:

Petitioners' assertion that other lands purchased by Respondent, from a private corporation, were "less valuable than" the land involved in the subject Lease-Option, is utterly without support or basis. As Petitioners point out in other parts of their argument, the various parcels involved are as much as thirteen miles apart (Appendix to Petition, p. A 67), and there is nothing in the "Motion to Remand" which even purports to show any disparity in value which is disproportionate to purchase price. Although Petitioners tried to "document" argument made in their motion, all they could manage with respect to relative value of lands was to say that they "believe" there to be a disparity in value. (Appendix to Petition, p. A 65) In any event, the question of land value was considered by the Court of Appeals in its opinion:

> . . . The [Petitioners] presented to the district court no reason to characterize the option pur-

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> chase price as unreasonable or inequitable at the time the lease was executed. We find no reason to suppose that the [Petitioners'] predecessors were so inexperienced or uninformed in 1961 that the present [Petitioners] should be insulated from a decree of specific performance. (Appendix to Petition, p. A 56, 453 F.2d at 833.)

Contrary to Petitioners' assertions, the entire tract acquired by Respondent, including the lands in question here, was acquired for use in connection with proposed solid fuel rocket testing, development and manufacturing facilities. The Land Use Study of the entire tract was attached to our response to the "Motion to Remand", and is in the Appendix to the Petition, p. A 107. Part of the facilities constructed by Respondent are on 960 acres of the lands involved here, which are in the southerly portion of the tract. Most of the balance of the lands involved here are in the northerly portion of the tract. (Appendix to Petition, A89) All the lands are part of a contiguous tract, and the lands which Petitioners say are 9 to 13 miles away from the present facilities are nonetheless contiguous to lands Respondent owns which cover the *entire 9 to 13 miles.* (Appendix to Petition, A89) The Respondent's lands which span the 9 to 13 miles Petitioners talk about *are themselves from one to seven miles in breadth, as well as 9 to 13 miles in length.* (Appendix to Petition, p. A89) In fact, the apparent and sensible explanation for the various land acquisitions is that all the lands were contemplated for use if the solid fuel project developed as expected. This appears from Respondent's Land Use Study. (Appendix to Petition, p. A 109)

Finally, Petitioners for some reason regard as important the issue of the 1968 ad valorem tax valuation of the

test caisson, constructed on part of the lands involved here at an expense of some $2,000,000. (R. Vol. II, p. 17) Petitioners do not dispute the fact of expenditure of $2,000,000 by Respondent in constructing the cast-cure-test facility, or rocket test caisson; they simply say that in 1968, when it was not in use through no fault of Respondent,[4] it stated its value for ad valorem tax purposes for that year to be $77,134. When it is not in use, or when its use is not reasonably expected, the test caisson is simply a very expensive and very specialized hole in the ground. Due to some recent developments, that "hole in the ground" may again become valuable as well as expensive.

In response to some portions of the "Motion to Remand, etc.," Respondent has referred to the recent federal program to develop a space shuttle rocket program, and to use solid fuel, re-usable rockets for propulsion. (Appendix to Petition, p. A99-A100) In fact, the federal agencies involved have determined that solid fuel rockets will be used in the $5.5 billion space shuttle program, and Respondent will be one of the prime bidders on the program. Additionally, it has been announced that the space shuttles will be launched from Cape Kennedy, only a relatively few miles from the lands in question. Thus, the tract acquired by Respondent will be necessary for production of solid fuel shuttle boosters if Respondent is a successful bidder on the project. Needless to say, Respondent would be most pleased to have the opportunity to use the lands in the manner originally contemplated.

---

[4]As noted by the Court of Appeals (Appendix to Petition, p. A37, 453 F.2d at 825):

> The plant was completed in the spring of 1964 and was in operation until June, 1967, at which time it ceased operations *due to cutbacks in the federal government's spending on solid rocket fuel research and development.*

SUMMARY OF ARGUMENT

QUESTION A (RE-STATED)

DID THE COURT OF APPEALS DECIDE AN IMPORTANT STATE QUESTION IN A WAY IN CONFLICT WITH APPLICABLE STATE LAW WHEN IT RULED THAT THE NOTICE FOR BIDS WAS SUFFICIENT TO SUPPORT AN EXECUTED AND PERFORMED CONTRACT, ABSENT SPECIFIC CHARGES OF ACTUAL FRAUD, MISCONDUCT, FAVORITISM, PREJUDICE OR DISCRIMINATION?

Petitioners have failed to show that this point satisfies the Rule 19, *Supreme Court Rules*, criteria for reviewing decisions of state law made by U.S. Courts of Appeal. In such cases, certiorari will be granted to review a state law question if (1) it is important and (2) the court of appeals has decided it in a way in conflict with applicable state law. These elements necessary for certiorari review must be considered in context of this Court's practice not to undertake review of state law questions when state authority at least arguably supports the decision sought to be reviewed. *Spiegel v. Commissioner*, 335 U.S. 701 (1949); *Allegheny County v. Frank Mashuda Co.*, 360 U.S. 185 (1959); *Sims v. United States*, 359 U.S. 108 (1959); *Propper v. Clark*, 337 U.S. 472 (1949); *Richards v. United States*, 369 U.S. 1 (1962).

Concerning sufficiency of the notice for bids herein, the Court of Appeals did not even reach the issue which Petitioners argue in support of a state law conflict. The cases argued by Petitioners to the Court of Appeals and

to this Court [*Mayes Printing Co. v. Flowers*, 154 So.2d 859 (Fla.App. 1st 1963); *Robinson's Inc. v. Short*, 146 So.2d 108 (Fla.App. 1st 1962)] involved bid notice requirements used in government *purchases* of specific items. This situation differs from bid notice requirements when government land is offered for sale and development. [E.g., *Jersey City Merchant's Council v. City of Jersey City*, 186 A.2d 684, 691-92 (N.J. 1962)]. The decision below does not rest on this distinction, however.

The Court of Appeals decided the bid notice issue based on a legal principle announced in *Wester v. Belote*, 103 Fla. 976, 138 So. 721 (1931), which deals specifically with cases involving contracts which have been made and entered *before* litigation is commenced attacking the sufficiency of the bid notice. In such cases, including the present case, courts are to indulge every presumption in favor of the validity of a bid notice, where what has been done is the result of a *bona fide* bid effort and no actual fraud, favoritism, prejudice or discrimination is charged.

The Court of Appeals found that all the *Wester v. Belote* elements were present in this case, and so refused to nullify the resultant contract. In doing so, the Court of Appeals simply *applied* Florida law. No conflict with Florida law is apparent or inherent. The decision, though important to this particular case, is hardly a decision of important state law sufficient for this Court to exercise its power to review by certiorari.

QUESTION B (RE-STATED)

DID THE COURT OF APPEALS DEPART EITHER ITS JURISDICTION OR LAWFUL PREROGATIVE IN RULING ON THE POWER OF PETITIONERS TO ENTER A LEASE-OPTION CONTRACT?

Petitioners have not and could not claim that applicable state law is in conflict with the decision of the Court of Appeals on the issue of Petitioners' power to enter into a lease-option. Although there is no case *on all fours*, the Court of Appeals rendered its decision in the context of about 100 years of Florida Supreme Court case law, saying "[a]s a matter both of statutory construction and of good faith and fair dealing, we conclude that the [Petitioners] should not prevail on the issue of authority to grant an option to purchase the land covered by the lease." 453 F.2d at 834.

Essentially, Petitioners ask this Court to issue certiorari and to order abstention or certification of the "power" question to the Florida Supreme Court. The impact of the argument, if it be adopted in this case, would be to destroy the ability of a plaintiff to choose the dispassionate federal forum in diversity cases unless his claim be based on case precedent *which is on all fours with the litigated issues.* Certification or abstention in this case would be an abdication of the duty imposed on the federal judiciary to decide cases presented for adjudication on proper jurisdictional bases. This is *not* a case which fits any category previously announced by this Court as proper for abstention or certification. See, *Allegheny County v. Frank Mashuda Co.*, 360 U.S. 185 (1959); *Louisiana*

Power & Light Co. v. Thibodaux, 360 U.S. 25 (1959); *Meredith v. City of Winter Haven*, 320 U.S. 228 (1943); *United Gas Pipe Line Co. v. Ideal Cement Company*, 369 U.S. 134 (1962); *Clay v. Sun Insurance Office, Ltd.*, 363 U.S. 207 (1960). It is demonstrably *not* encompassed within an "extraordinary and narrow exception to the duty of a [federal court] to adjudicate a controversy before it." *Allegheny County v. Frank Mashuda Co.*, 360 U.S. 185, 188 (1959). It *is* an ordinary diversity of citizenship action presenting questions of state law to be decided *in the context of existing state law.*

Petitioners say that their powers over lands held by them are limited to the power to sell and the power in certain circumstances to lease. §§253.02, .45, .47, *Fla. Stats.* Record Volume III consists of 207 pages of conveyances which Petitioners admit they have entered, but which are not *specifically* authorized by the statutes. A number of these leases contain *options* for renewal, and all are indistinguishable from the present contract based on Petitioners' contentions here. (R. Vol. III, pp. 178, 95, 58, 8, 109, 121, 138, 142, 31) Contrary to Petitioners' argument, it is clear that Petitioners statutory powers carry *express and implied* authority for them to exercise general dominion over lands held by them, and "*to make such arrangements for the drainage of swamp and overflowed lands as in their judgment may be most advantageous . . .*" §253.18, *Fla. Stats.; Trustees of the Internal Improvement Fund v. Root*, 63 Fla. 666, 58 So. 371 (1912); *Trustees of the Internal Improvement Fund v. Gleason*, 15 Fla. 384 (1875); *Watson v. Caldwell*, 35 So.2d 125 (Fla. 1948); *Hampton v. Matheson*, 164 So. 714 (Fla. 1936). The Florida Supreme Court has refused to review the actions of Petitioners in dealing with these lands, *except to protect against deprivation of*

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private rights or violation of the Constitution. Everglades Sugar & Land Co. v. Bryan, 81 Fla. 75, 87 So. 68, 79 (1921) Neither of those situations is present here.

Under Florida law, the aforementioned administrative construction of their powers by Petitioners is entitled to "great persuasive force and efficacy; and a court will not depart from such construction except for the most cogent reasons and unless clearly erroneous." *Green v. Hood,* 120 So.2d 223, 226 (Fla. App. 2d 1960); also, *Gay v. Canada Dry Bottling Co.,* 59 So.2d 788 (Fla. 1952); *United States Gypsum Co. v. Green,* 110 So.2d 409 (Fla. 1959). Especially is this so where, as here, such administrative construction is of long usage. *State ex rel. Fronton Exhibition Co. v. Stein,* 144 Fla. 387, 198 So. 82 (1940); *Green v. Stuckey's of Fanning Springs,* 99 So.2d 867 (Fla. 1958); *Green v. Hood,* 120 So.2d 223 (Fla. 2d Dist. 1960); *Kittel v. Trustees of International Improvement Fund of Florida,* 139 Fed. 941 (N.D. Fla. 1905)

The Court of Appeals also had before it argument and citation of Florida decisions holding that the doctrines of both legal and equitable estoppel have been invoked many times to preclude disavowance by government, its officers and agencies, of a completely void transaction or instrument entered into without authority. E.G., *City of Winter Haven v. State ex rel. Landis,* 125 Fla. 392, 170 So. 100 (1936), *Daniell, et al. v. Sherrill, et al.,* 48 So.2d 736 (Fla. 1950), *Trustees of Internal Improvement Fund v. Bass,* 67 So.2d 433 (Fla. 1953), *Trustees of Internal Improvement Trust Fund v. Claughton,* 86 So.2d 775 (Fla. 1956), *Lobean v. Trustees of the Internal Improvement Fund,* 118 So.2d 226 (Fla.App. 1st 1969), cert. disch., 127 So.2d 98 (Fla. 1961), *City of Naples v. Conboy,* 182

So.2d 412 (Fla. 1965). See also, *Board of Pub. Instruction v. State ex rel. Tanger Inv. Co.*, 121 Fla. 703, 164 So. 697 (1935), *City of Punta Gorda v. Eureka Fire Hose Mfg. Co.*, 117 Fla. 614, 158 So. 128 (1934).

To say that the Court of Appeals "initially construed" the Petitioners' statutory powers is to ignore about 100 years of Florida case law. The Court of Appeals simply decided a contract case in the context of state law. There is an abundance of state law in this area, and it all points clearly to the result which was reached by the Court of Appeals. The case was not and is not a proper one for abdication of federal jurisdiction. It does not involve federal constitutional questions, it does not involve the sovereign prerogative, it does not affect the governmental processes. In Florida, the contract claims of state officers "appeal to the conscience of a chancellor with the same, but with no greater or less force than . . . those of an individual under like circumstances." *Daniell v. Sherill*, 48 So.2d 736, 739 (Fla. 1950), in which the Florida Supreme Court said:

> If we say with Mr. Justice Holmes, "men must turn square corners when they deal with the Government," it is hard to see why the Government should not be held to a like standard of rectangular rectitude when dealing with its citizens. *Ibid.*

The Florida Supreme Court has specifically ruled that Petitioners are in a position "which cannot be commended" when they come "into a court of equity alleging want of power and illegality in [their] contracts . . ." *Trustees of the Internal Improvement Fund v. Gleason*, 15 Fla. 384, 397-98 (1875).

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This case, therefore, does not fit within the "extraordinary and narrow exception to the duty of a [federal court] to adjudicate a controversy properly before it" [*Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 188-89 (1959)] which is known as abstention. This case is clearly governed by *Meredith v. City of Winter Haven*, 320 U.S. 228 (1943):

> . . . the difficulties of ascertaining what the state courts may hereafter determine the state law to be do not in themselves afford a sufficient ground for a federal court to decline to exercise its jurisdiction to decide a case which is properly brought to it for decision.
>
> *The diversity jurisdiction was not conferred for the benefit of the federal courts or to serve their convenience. Its purpose was generally to afford to suitors an opportunity in such cases, at their option, to assert their rights in the federal rather than in the state courts. Id*, at 234.

Respondent chose the federal forum to litigate this contract case, because Petitioners are political, elected officials, as are the judges of Florida's state courts. The law of Florida clearly defines the rights of parties who litigate with Petitioners, and Respondent felt obliged to bring this action in federal court to insure that the law of Florida would be dispassionately applied to this case. Certiorari should not be granted at this late date for the purpose of denying Respondent its federal forum.

QUESTION C (STATED BY PETITIONERS)

WAS THE ORDER OF THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT, DENYING THE PETITIONERS' MOTION TO REMAND WITH LEAVE TO MOVE TO VACATE THE DISTRICT COURT'S JUDGMENT A DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS TO SUCH AN EXTENT AS TO REQUIRE THE EXERCISE BY THIS COURT OF ITS SUPERVISORY POWERS?

Petitioners seek certiorari to review denial by the Court of Appeals of a "Motion To Remand With Leave To Move To Vacate Judgment." This motion, not authorized or anywhere mentioned in the Federal Appellate Rules, was made at the rehearing petition stage. Certiorari is sought on the ground that denial of this motion was such a departure from the accepted and usual course of judicial proceedings as to require exercise of this Court's supervisory powers. (Rule 19(b), *Supreme Court Rules*)

The supervisory power of this Court referred to in Rule 19 has been exercised in limited circumstances when a lower court has departed from the course of justice in a way which would lead to a lack of confidence in the judicial system if sanctioned. Typical cases involve the admission of tainted testimony in criminal proceedings [*Mesarosh v. United States*, 352 U.S. 1 (1956); *Communist Party of U.S.A. v. Subversive A.C. Bd.*, 351 U.S. 115 (1956)]; perversion of constitutional rights by lower courts such as the right to be free from unreasonable search and

seizure [*Chapman v. U.S.*, 365 U.S. 610 (1961)]; loss of the Seventh Amendment right to a jury trial [*Beacon Theatres v. Westover*, 359 U.S. 500 (1959)]; and total misconstruction of United States statutes [*United States v. Rizzo*, 297 U.S. 53 (1936)]. This Court has utilized the procedure to engage in a sort of judicial fine-tuning. The supervisory power is not used to overturn discretionary judgments made within the bounds of discretion, but rather is used to correct occasional *flagrant abuses of discretion or actual disobedience of law.*

Surely it could not be said that the administration of justice has been "tainted" by the Court of Appeals' denial of the post-opinion "Motion to Remand, etc." The Court of Appeals was abundantly fair to Petitioners to consider the motion, which was in any event addressed to the discretion of the Court of Appeals. Denial of the motion is not ground for exercise of this Court's supervisory power.

The post-opinion "Motion to Remand, etc." consisted of argument on certain alleged "facts" which purportedly demonstrated that (1) the option price for the subject lands supposedly was not sufficient and (2) a large portion of the subject lands supposedly were not intended for use by Respondent in connection with solid fuel rocket development. Petitioners went outside the record to make such arguments. They attached to their motion a variety of documents which are five to ten years old — and which have *all been part of the public records for years.* These documents are themselves hearsay, and are hardly "newly discovered evidence", as alleged. 7 *Moore's Federal Practice* ¶60.23 [4].

Petitioners had 8 months in the District Court between filing and granting of Respondent's summary judgment motion — but no "evidence" of this sort was ever sought to be produced. The Court of Appeals gave Petitioners special leave to bring up new matters at the appellate stage, and though other questions were raised, this so-called "evidence" was not presented until *after* the appellate court's opinion was filed.

Perhaps most important, these "factual" allegations are not true and are not substantiated by the "Motion to Remand, etc." Petitioners have not and could not show that values of the various parcels comprising the entire tract are disproportionate to their various purchase prices. The lands cover many miles, and are of various values. Petitioners only say they "believe" the purchase prices to be disproportionate to value.

The Land-Use Study which Respondent filed in its response to the "Motion to Remand, etc." (Appendix to Petition, p. A107) demonstrates that the entire tract was acquired for use in solid fuel rocket development and production. The recent decision to use solid fuel boosters in the $5.5 billion space shuttle program means that Respondent may soon again have the opportunity to reput all the lands to their long-intended use.

ARGUMENT

QUESTION A (RE-STATED)

DID THE COURT OF APPEALS DECIDE AN IMPORTANT STATE QUESTION IN A WAY IN CONFLICT WITH APPLICABLE STATE LAW WHEN IT RULED THAT THE NOTICE FOR BIDS WAS SUFFICIENT TO SUPPORT AN EXECUTED AND PERFORMED CONTRACT, ABSENT SPECIFIC CHARGES OF ACTUAL FRAUD, MISCONDUCT, FAVORITISM, PREJUDICE OR DISCRIMINATION?

Petitioners have made the arguments to this Court which they made to the Court of Appeals, but they did not and could not demonstrate that the decision of the Court of Appeals is in conflict with applicable Florida law. Thus, they have not presented a jurisdictional basis for certiorari to issue in this case. It is the rule of this Court, of course, that a state law question will not be reviewed by certiorari unless (1) it is important, and (2) the Court of Appeals has decided it *in a way in conflict with applicable state law.* Rule 19, *Supreme Court Rules.* As a matter of practice, this Court has been loathe to undertake review of state law questions when there is state authority which at least arguably supports the Court of Appeals' decision. *Spiegel v. Commissioner*, 335 U.S. 701 (1949); *Sims v. United States*, 359 U.S. 108 (1959); *Allegheny County v. Frank Mashuda Co.*, 360 U.S. 185 (1959); *Propper v. Clark*, 337 U.S. 472 (1949); *Richards v. United States*, 369 U.S. 1 (1962).

In deciding that the Petitioners could not avoid their contractual duties because of the form of notice for bids published by them, the Court of Appeals did no more than apply the law of Florida announced in *Wester v. Belote*,

103 Fla. 976, 138 So. 721 (1931). The sufficiency of the notice for bids was not only acknowledged by the lessors in the lease-option,[5] but was conceded by Petitioners in the District Court (See, 318 F.Supp. at 61, 453 F.2d at 826 Appendix to Petition, pp. A15, A40). This concession was repudiated by them in the Court of Appeals.[6] The arguments there made were that (1) the notice for bids did not contain a detailed specification of the manufacturing facility which a successful bidder would be obliged to construct; and (2) the bid condition requiring construction of a manufacturing facility made the offering biddable only by Respondent.

These contentions collide with each other, of course, because if the first were satisfied by specification in the notice requiring a particular testing, development and manufacturing facility for solid fuel rockets, then the problem posed in the second point would be inescapable. The dilemma is inevitably encountered when public agencies must advertise for bids to be submitted for private purchase and development of lands, rather than for the purchase by public bodies of specified goods. The specificity

[5]It provided, in pertinent part (R. Vol. I, p. 33):

"WHEREAS, *all statutory requirements have been satisfied and other necessary action taken, the Trustees* of the Internal Improvement Fund of the State of Florida *and the State Board of Education of Florida*, component state agencies of the State of Florida, *are authorized and empowered to enter into this Agreement* and to authorize its execution.

[6]Cases which Petitioners cite (Petition, p. 8) do not stand for the proposition that succeeding state officers are free to ignore stipulations of predecessors in office. They do stand for the proposition that stipulations of law are not binding on courts. Petitioners cannot renege on the stipulated facts regarding the good faith of the parties in conducting the bid process, a fact crucial to the Court of Appeals' decision. As to the legal questions, it is immaterial whether the stipulation is binding, because the Court of Appeals considered and decided the legal issues.

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required in notices for bids must be different in order to accomplish the purpose of asking for bids, as the Supreme Court of New Jersey has noted:

> However, in the sale of lands, the greater the specificity of the type of improvement, the more restricted is the field of possible purchasers, and hence of competitive bidders. Where the specifications for "the use to be made of such land and any conditions as to buildings or structures to be erected thereon" are reasonably general, the bidding is made attractive to a great number of prospects. Thus, it may be said that competition for the purchase of municipal lands is stimulated rather than stifled in direct proportion to the absence of restrictions affecting future use. Clearly, this is a result that is opposite to what occurs where the municipality seeks bids for a public improvement under general terms and conditions.
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> * * *
>
> . . . the advertisement created a sufficient common norm or standard. *Jersey City Merchants Council v. City of Jersey City*, 186 A.2d 684, 691-92 (N.J. Sup. Ct. 1962).

Although this factor distinguished the present case from the cases relied upon by Petitioners,[7] the Court of Appeals did not choose to rest its decision on whether the subject notice for bids was either too general or too specific, both of which Petitioners contended were its failures.

[7] *Mayes Printing Co. v. Flowers*, 154 So.2d 859 (Fla. App. 1st 1963), and *Robinson's Inc. v. Short*, 146 So.2d 108 (Fla. App. 1st 1962) both were cases involving the purchase by public bodies of specific goods, and the notices for bids were attacked for undue specificity or undue vagueness.

Instead, the Court of Appeals applied the rule announced in *Wester v. Belote, supra,* which governs cases *in which a contract has already been entered before any litigation is commenced attacking contract validity on grounds of insufficient notice for bids:*

> . . . *it is the duty of the court to indulge in all reasonable presumptions as to* [the notice's] *regularity and validity, especially when the attack made is not on the ground of fraud,* but because of alleged irregularities and uncertainties in the proposals by means of which the contract was finally arrived at. (138 So. at 725)
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> • • •
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> But it by no means follows that a competitively awarded contract must in every instance be set aside, and payments under it enjoined, at the suit of a citizen and taxpayer, because of insufficient specifications embraced in the advertisement for bids *where what has been done by the board appears to have been done as a result of a bona fide effort* on the county commissioners' part *to comply with the statute, and no actual fraud, misconduct, favoritism, prejudice, or discrimination is charged with reference to the transactions as completed.*" (Id, at 726).

The Court of Appeals did not alter the test required under Florida law; it did not construe the rule of *Wester v. Belote;*[8] it did not create or interpret any exception to Florida law on bid notices. The Court of Appeals simply noted that the criteria present in *Wester v. Belote,* and which resulted in approval there of the contract notice, were also present in this case. A contract had been entered

[8] 103 Fla. 976, 138 So. 721 (1938)

after notice for bids was published. There was no claim of actual fraud, misconduct, favoritism, prejudice or discrimination. Accordingly, the Court of Appeals resolved the point as *Wester v. Belote* compelled. (Appendix to Petition, A60-A61, 453 F.2d at 835-36).

No conflict with Florida law is apparent from the Court of Appeals' decision, and no conflict inheres in it. The decision of the Court of Appeals on this point does nothing except bind Petitioners to obey *this contract*. The decision does not even attempt to define or decide whether a notice like the present one would withstand attack if it had not already resulted in an executed and partially performed contract. Thus, this decision has no bearing on the way in which Petitioners may or may not cast bid notices in the future. It is submitted, therefore, that the notice of bids issue does not present an *important* issue of state law, as that term is used in Rule 19, *Supreme Court Rules*. While the issue is important to resolution of the present case, the limited context in which the question arises makes review of it by this Court unnecessary and unproductive. Accordingly, certiorari should not issue to review this issue. As the Court said in *Estate of Spiegel v. Commissioner*, 335 U.S. 701, 708 (1949):

> It would be wholly unprofitable for us to analyze [state] cases on the point here urged. It is sufficient for us to say that we think reasonable arguments can be made based on [state] cases to support a determination of this question either for or against the petitioner's contention. Under these circumstances, we will follow our general policy and leave undisturbed this Court of Appeals holding on a question of state law.

QUESTION B (RE-STATED)

DID THE COURT OF APPEALS DEPART EITHER ITS JURISDICTION OR LAWFUL PREROGATIVE IN RULING ON THE POWER OF PETITIONERS TO ENTER A LEASE-OPTION CONTRACT?

Petitioners have failed to demonstrate any Rule 19[9] basis for review of the decision below insofar as it deals with their power to enter into a lease-option contract. As noted above, the elements necessary for certiorari review of state law decisions by U.S. Courts of Appeals are: (1) decision of an important question of state law (2) in a way in conflict with applicable state law. [Rule 19(b), *Supreme Court Rules*]

Petitioners have not and could not claim that applicable state law is in conflict with the decision presented here for certiorari review. (Petition for Writ of Certiorari, p. 15-18) The Court of Appeals decided, in context of Florida statutory and case law, that Petitioners have power to enter into a contract of lease-option. This same issue was raised by the District Court, briefed by the parties there, and *conceded* by the Petitioners or their predecessors in office. (R. Vol. II, pp. 43-50)[10] The District Court found

[9] *Supreme Court Rules*

[10] Petitioners' counsel stated:

2. *Lease With Option to Purchase*

As admirably reasoned and documented by plaintiff (pp. 1-8, plaintiff's Memorandum of April 6, 1970) the Board of Trustees of the Internal Improvement Trust Fund is and has been statutorily empowered to sell and to lease such realty as the subject property. The Board of Education is and has similarly empowered (pp. 8-10, *ibid*). The conjunction of the powers is neither prohibited by law nor inconsistent with the statutory and judicial authorities . . . (R. Vol. II, p. 45)

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that Petitioners possess power to lease-option. 318 F.Supp at 61. The issue was again raised by Petitioners' counsel when leave of the Court of Appeals was sought and granted for additional briefs. (See p. 9, Petition for Writ of Certiorari.) It was resolved by the Court of Appeals' decision that "[a]s a matter both of statutory construction and of good faith and fair dealing, we conclude that the [Petitioners] should not prevail on the issue of authority to grant an option to purchase the land covered by the lease." 453 F.2d at 834

Petitioners do not claim that the Court of Appeals' ruling on this issue is in conflict with Florida law; rather, they say the issue is open to question, and ask this Court to issue its writ of certiorari, and then to certify this issue to the Florida Supreme Court. Petitioners have never before made a motion for certification of this question to the Florida Supreme Court; they never alluded to the certification procedure until *after* the Court of Appeals had decided the issue favorably to Respondent. (Petition for Rehearing, p. 6)

Essentially, Petitioners say that this case should be certified to the Florida Supreme Court because there is no Florida case *squarely on point* deciding that Petitioners' powers include the power to enter into a lease-option contract. The impact of the argument, if it be adopted by this Court, would be to destroy the ability of a plaintiff to choose the more dispassionate federal forum in diversity

cases unless his claim be based on case precedent *which is all all fours with the litigated issues.*[11]

Certification or abstention in this case would be an abdication of the duty imposed on the federal judiciary to decide cases presented for adjudication on proper jurisdictional bases. This is *not* a case in which constitutional adjudication depends upon unresolved state law questions, as were the cases upon which Petitioners rely. *United Gas Pipe Line Company v. Ideal Cement Company*, 369 U.S. 134 (1962); *Clay v. Sun Insurance Office, Ltd.*, 363 U.S. 207 (1960). It is demonstrably *not* encompassed within an "extraordinary and narrow exception to the duty of a (federal court) to adjudicate a controversy before it." *Allegheny County v. Frank Mashuda Co.*, 360 U.S. 185, 188 (1959). It is an *ordinary diversity of citizenship action* presenting questions of state law to be decided *in the context of existing state law.* The effect of Petitioners' argument on this point would be to deprive the plaintiff of a federal forum whenever plaintiff cannot cite a state case on all fours. Another important aspect of Petitioners' theory is that a diversity defendant should be allowed to resort to this tactic *after losing the case in the District Court and Court of Appeals without uttering a word about certification or abstention.*

If there could be a case suitable for the exotic procedure Petitioners seek, it most certainly is not this one. In deciding the "power to lease-option" issue, the Court of

[11]A virtually identical request, involving the Florida certification procedure, was denied by this Court in *Intercontinental Promotions, Inc. v. Miami Beach First National Bank*, —— U.S. ——, 30 L.Ed. 2d 89 (1971), *reh den.* —— U.S. ——, 30 L.Ed 2d 297 (1971). The question presented there, according to Law Week, was: "Should federal court in diversity action initially consider and interpret Florida state statute prior to consideration thereof by Florida state courts even though procedural machinery exists to obtain ruling on state law from state's highest tribunal?" 40 U.S.L.W. 3096.

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Appeals: (1) decided an ordinary contract case by following the principles evident from almost 100 years of Florida decisions in this legal area, and (2) decided, as it was obliged to do, an *Erie* question presented in a diversity case, brought in federal court by a plaintiff who resorted for good reason to a dispassionate forum. Examination of Florida law will demonstrate the validity of the first statement; and review of the crazy-quilt pattern this litigation has taken from the start should prove the second.

The "Power" Issue Was Decided In Context of Florida Law

Petitioners contend that their powers as Trustees of the Internal Improvement Trust Fund of Florida, and as constituent members of the Board of Education of Florida, are limited with respect to lands held by them to the power to sell the lands outright. They say that an option contract is outside their powers over lands held by them because (1) the statutes do not specifically grant the power to option land and (2) an option contract improperly imposes restriction on the power of subsequent elected officers to deal with the lands. (pp. 16-18 of Petition for Writ of Certiorari.)

To make this argument, Petitioners have extracted from Chapter 253, *Fla. Stats.*, those words appearing in §253.02, which empower the Trustees to "sell and transfer said lands to the purchasers and receive payment for the same, * * *" Petitioners say that there has been passed no legislation authorizing them to lease lands except as appears in §§253.45, 253.47, et seq., *Fla. Stats.* Petitioners agree that they have entered into leases which are not authorized by these specific leasing statutes, and that they have entered into lease contracts containing *options* to renew leases. (R. Vol. III, pp. 178, 95, 58, 8, 109, 121, 138,

142, 31.)[12] Nonetheless, Petitioners contend that they have no power to enter into *this* option. At no time have Petitioners tried to explain or distinguish other "unauthorized" land dealings from this so-called "unauthorized" option.

The theory of Petitioners' argument here and in the Court of Appeals that the Trustees and Board of Education were without power or authority to grant an option to purchase lands owned by them was that the grant of an option would "tie the hands" of successor-boards so that no sale of such lands could be made by them. But this "logic" is lost when it is considered that leases of such lands for a long term of years or in perpetuity, as the Trustees and Board of Education have been doing for decades, just as effectively precludes such lands from being sold at all, or at least from being sold for as high a price as would be obtainable if the lands were unencumbered by any lease.[13]

In fact, if the only statutory authority for this contract were the power to "sell," Petitioners still would have ample power to convey interests in realty other than fee simple and to use conveyancing devices other than outright sales. "[A] grant of power to sell necessarily carries with

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[12]R. Vol. III consist of 207 pages of conveyances by Petitioners of swamp and overflowed lands which are less than outright sales. They include grants of easements in perpetuity, leases for agricultural, grazing, campsite and airport use, *none* of which are *specifically* authorized by statute. One agreement is entitled "Lease-Purchase Agreement" by which the Trustees agreed with a water management district that certain lands and improvements would be conveyed to the district if and when certain payments were made. R. Vol. p. 31.

[13]The sale of lands by one Board, for that matter, precludes successor-Boards from exercising their power to "sell and transfer." The entire statutory pattern obviously contemplates that Petitioners may exercise dominion over lands in ways which cannot be "undone" by successor boards.

it a grant of power to transfer an interest less than an absolute one."[14]

In Florida, the question was treated in an Attorney General's opinion in 1957. Then Attorney General and now Florida Supreme Court Justice Richard W. Ervin was asked to give an opinion on whether a county, which has the power to "sell and convey" property, may "lease" it, and on what terms. In reply, Attorney General's opinion 057-76 stated:

> "Since we concluded in opinion 052-155, . . . that the power to sell included the authority to lease county property under the same circumstances, it would seem to logically follow that if the board of county commissioners may divest the county of its entire interest in property by the sale thereof, it might enter into a contract of lease for a period of years extending beyond their respective terms of office." Biennial Report of the Attorney General (1957-1958) p. 80.

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[14]43 C. J. Municipal Corporations, §2098 (1927); See *Green vs. City of Rock Hill*, 147 S.E. 346 (S.C. 1929); *Waskey vs. Chambers*, 224 U.S. 564 (1912); *Charles Realty Co. vs. City of Newark*, 10 A.2d 640 (N.J. App. 1945); *Main vs. Mayor etc. of Haggerstown*, 104 Atl. 410 (Md. App. 1918); *Falls County vs. DeLaney*, 11 S.W. 492 (Tex. 1889); *Cf. United States vs. Gratiat*, 14 Peters 526, 10 L.Ed. 573 (1840) (power to "dispose" includes power to lease); *Phelps vs. Harris*, 101 U.S. 370 (1880) (power to "dispose" includes power to exchange); *Hill vs. Sumner*, 132 U.S. 120 (1889); and *Opinion of the Justices*, 73 So.2d 238 (Ala. 1954) (power to "grant" includes power to lease); *Ambrozich vs. City of Eveleth*, 271 N.W. 635 (Minn. 1957); *Black vs. Forsyth County*, 193 Ga. 57, 19 S.E.2d 297 (1942) (power to "direct and control" includes power to lease); *City of Fayetteville vs. Baker*, 176 Ark. 1030, 5 S.W.2d 302 (1928) (power to "control, manage . . . sell" includes power to lease); *Board of Councilmen vs. Pattie*, 227 Ky. 343, 12 S.W.2d 302 (1928) (power to "sell" includes power to lease); *Accord, Burns vs. Moore*, 307 Ky. 167, 209 S.W.2d 735 (1948).

Petitioners acknowledge that the Florida Legislature created the Internal Improvement Trust Fund "to encourage a liberal system of internal improvements in the State of Florida." (Appellants' Supplemental Brief in Court of Appeals, p. 8). If more of it is read than a few words, Chapter 253, *Fla. Stats.*, and the constructions of the Florida Supreme Court demonstrate that Petitioners are and have been empowered to convey such interests in lands held by them as they deem expedient and proper. *Florida's Courts have refused to review the Trustees' acts except for violation of the Florida Constitution or invasion of private legal or equitable rights*, neither of which is claimed by Petitioners. *Everglades Land & Sugar Co. v. Bryan*, 81 Fla. 75, 87 So. 68, 79 (1921).

The portion of §253.02 on which Petitioners rely says the Trustees have power to sell and transfer said lands, and receive payment for same; but the Florida Supreme Court has held that the Trustees have the power to "pledge", "bind", or "appropriate" the lands in order to make arrangements for drainage and development which they judge best, *Trustees of Internal Improvement Fund v. Root*, 63 Fla. 666, 58 So. 371, 378 (1912), where the Court also said that the statutes empowering the Trustees must be construed together to effect the purpose of reclamation. 58 So. at 377. Section 253.18 provides that the Trustees shall "make such *arrangements* for the drainage of the swamp and overflowed lands as *in their judgment may be most advantageous* * * *."

In *Trustees of the Internal Improvement Fund v. Gleason*, 15 Fla. 384 (1875), Gleason contracted for the right to purchase certain amounts of acreage from the Trustees if and when Gleason opened certain ditches.

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Gleason dug the ditches and the Trustees refused to convey the land, a situation remarkably analogous to this case. The Trustees claimed that their contract was *ultra vires*, but the Florida Supreme Court ruled that it was within their power to "make such arrangements" for drainage as they judged advantageous. 15 Fla. at 398-99. It was recognized in *Watson v. Caldwell*, 35 So.2d 125 (Fla. 1948), that the Petitioners' statutory powers carried *implied* terms, for a conveyance not specifically authorized in relation to the Everglades National Park project was there approved on the basis of the *implied* powers of the Board of Education and the Trustees. *Hampton v. Matheson*, 164 So. 714 (Fla. 1936), held that the Board of Education had power to contract to dispose of lands to be acquired by them, *before* receiving title, which essentially gave vendee a purchase option.

The Court of Appeals also had before it argument and citation of Florida decisions holding that the doctrines of both legal and equitable estoppel have been invoked many times to preclude disavowance by government, its officers and agencies, of a completely void transaction or instrument entered into without authority. E.g., *City of Winter Haven v. State ex rel. Landis*, 125 Fla. 392, 170 So. 100 (1936), *Daniell, et al. v. Sherrill, et al.*, 48 So.2d 736 (Fla. 1950), *Trustees of Internal Improvement Fund v. Bass*, 67 So.2d 433 (Fla. 1953), *Trustees of Internal Improvement Trust Fund v. Claughton*, 86 So.2d 775 (Fla. 1956), *Lobean v. Trustees of the Internal Improvement Fund*, 118 So.2d 226 (Fla. App. 1st 1969), *cert. disch.*, 127 So.2d 98 (Fla. 1961), *City of Naples v. Conboy*, 182 So.2d 412 (Fla. 1965). See also, *Board of Pub. Instruction v. State ex. rel. Tanger Inv. Co.*, 121 Fla. 703, 164 So. 697 (1935),

City of Punta Gorda v. Eureka Fire Hose Mfg. Co., 117 Fla. 614, 158 So. 128 (1934).

It was clear from the record that Petitioners had entered and continued to enter into transactions which, according to their theory in this case, would not be permitted. (R. Vol. III, pp. 2-207). This administrative construction of powers, under Florida law, is entitled to "great persuasive force and efficacy; and a court will not depart from such construction except for the most cogent reasons and unless clearly erroneous." *Green v. Hood*, 120 So.2d 223, 226 (Fla. App. 2d 1960); also, *Gay v. Canada Dry Bottling Co.*, 59 So.2d 788 (Fla. 1952); *United States Gypsum Co. v. Green*, 110 So.2d 409 (Fla. 1959). Especially is this so where, as here, such administrative construction is of long usage. *State ex rel. Fronton Exhibition Co. v. Stein*, 144 Fla. 387, 198 So. 82 (1940); *Green v. Stuckey's of Fanning Springs*, 99 So.2d 867 (Fla. 1958); *Green v. Hood*, 120 So.2d 223 (Fla. 2d Dist. 1960); *Kittel v. Trustees of International Improvement fund of Florida*, 139 Fed. 941 (N.D. Fla. 1905).

Thus, Respondent argued to the Court of Appeals that the Florida statutes and cases supported the District Court finding that Petitioners had power to enter the Lease-Option contract [318 F.Supp. at 61], and in the alternative that Petitioners were estopped under Florida law from denying their power to enter the contract [Appellee's Supplemental Brief, pp. 36-50]. The Court of Appeals found that Petitioners' "lack of power" argument was not well taken "as a matter both of statutory construction and of good faith and fair dealing***." [453 F.2d at 834]. In doing so, the Court of Appeals hardly undertook to "initially construe" Petitioners' powers with respect to the

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subject lands. The Florida Courts have been doing so since at least 1875 [*Trustees v. Gleason*, 15 Fla. 384 (1875)]; and the Florida Supreme Court has consistently held that Petitioners' powers are to be construed broadly, and that their actions are not to be reviewed except for deprivation of private rights or violation of the Constitution.[15]

Federal Diversity Jurisdiction Provided Respondent A Dispassionate Forum

Plaintiff chose the federal forum to seek enforcement of its contractual rights, because "federal judges appointed for life are more likely to enforce the . . . rights of unpopular [parties] than elected state judges."[16] Respondent is not a member of any minority group, but its position was clearly in need of dispassionate adjudication in a forum which would apply law and not politics to the case at hand.

This controversy was born in political limelight (R. Vol. II, pp. 6-33), and has been conducted thereafter with the same trappings. After Respondent exercised the purchase option, Petitioners first undertook orally to "void" the contract (whatever that means), at a cabinet meeting. (R. Vol. II, p. 29) The District Court ruled that the contract was not "voided", and was specifically enforceable; the District Court found the equities to be with the Plaintiff there, Aerojet. (Appendix to Petition, pp. A 1-A 25) An appeal was taken, and when the present constituent

[15] *E.g., Everglades Sugar & Land Co. v. Bryan, supra.*

[16] *England v. Louisiana Medical Examiners*, 375 U.S. 411, 427 (1964). Justice Douglas concurring, in an opinion which discusses the various reasons parties choose a federal forum to litigate causes which may include questions of state law.

members of the Petitioners board were elected,[17] the Circuit Court of Appeals permitted additional rounds of briefs. In all, three rounds of briefs were presented to the Court of Appeals. The present Petitioners, when presenting supplemental briefs, doubled back on concessions made by their predecessors, and even contended that their predecessors acted without or in excess of legal authority. When they lost in the Circuit Court of Appeals, Petitioners dredged up and injected into this record voluminous hearsay documents from which they began arguing that Respondent had put something over on their predecessors in office by entering the lease-option.

Petitioners' implications and accusations are unwarranted, prejudicial and offensive, but they nevertheless have been made with reckless abandon. The entire case has been a political football, and Respondent has been abused everywhere *except in federal court*. Respondent did not and could not have foreseen the extent to which this would occur, but Respondent *did* foresee the need to seek enforcement of its legal rights in federal court.[18] That foresight has been vindicated, though tested beyond all expectations.

Under these circumstances, this case is not one which is proper for abstention or for certification. The cases Petitioners cite do not stand for the proposition that certiorari should be used by this Court to effect abstention, much less certification to a state court, in cases which deal

[17]Five of seven cabinet members assumed their offices in January, 1970.

[18]Congress recognized many years ago the need to provide such a forum, and was motivated to establish diversity jurisdiction in federal courts. Judiciary Act of 1789, 1 Stat. 73; Friendly, "The Historic Basis of Diversity Jurisdictions, 41 *Harv. L. Rev.* 483.

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only with questions of state law. *United Gas Pipe Line Co. v. Ideal Cement Co.*, 369 U.S. 134 (1962), cited by Petitioners, involved the constitutional validity of a municipal taxing scheme *vis-a-vis* the Commerce Clause. (369 U.S. at 135). The Court of Appeals ruled on the constitutional issue, and in doing so, interpreted the taxing scheme prior to *any* interpretation by state courts. (*Ibid.*) Based on *its* interpretation of the taxing enactment, the Court of Appeals invalidated the taxing scheme on Commerce Clause grounds.

This Court said: "Wise judicial administration in this case counsels that decision of the *federal question* be deferred * * *." (*Id.* at 135-36.) In the case at bar, *no* federal question is posed,[19] the issues are simply ones of state law. Nor is the Court of Appeals writing on a clean slate, as it were, in deciding the issue of Petitioners' authority to Lease-Option lands. While there is no case precisely holding that Petitioners may enter into lease-options, there are numerous cases which interpret Petitioners' statutory powers and the effectiveness of their disposition of lands held by them, and point clearly to the conclusion reached by the Court of Appeals (See argument *supra*, at pp. 24-33).

In *Clay v. Sun Insurance Office, Ltd.*, 363 U.S. 207 (1960), cited by Petitioners, this Court stated that the abstention doctrine was appropriate "where a *federal constitutional question* might be mooted" by an authoritative state court decision of an unresolved issue of state law. (363 U.S. at 212).

[19]Except to the extent that the Court of Appeals' denial of a post-opinion "motion to remand" presents questions of federal appellate *procedure*.

We are aware of no case which requires this Court to grant Petitioners' request that federal jurisdiction now be abdicated. To the contrary, this diversity case for enforcement of a contract must be decided by federal courts upon proper jurisdictional showing. This Court described the scope of abstention in *Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 188-89 (1959):

> *The doctrine of abstention*, under which a District Court may decline to exercise or postpone the exercise of its jurisdiction, *is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it.* Abdication of the obligation to decide cases can be justified under this doctrine only in the exceptional circumstances where the order to the parties to repair to the state court would clearly serve an important countervailing interest. Since no exceptional circumstances justifying abstention appear in this case we think the Court of Appeals was correct in holding that the District Court should have adjudicated the respondents' claim.

This Court has sanctioned a federal court's postponement of the exercise of its jurisdiction in cases presenting a federal constitutional issue which might be mooted or presented in a different posture by a state court determination of pertinent state law. See, e.g., Meridian v. Southern Bell Tel. & Tel. Co., 358 U.S. 639, 3 L.Ed.2d 562, 79 S.Ct. 455; Government & Civic Employees, O.C. CIO v. Windsor, 353 U.S. 364, 1 L.Ed.2d 894, 77 S.Ct. 838; Leiter Minerals, Inc. v. United

States, 352 U.S. 220, 1 L.Ed.2d 267, 77 S.Ct. 287; Albertson v. Millard, 345 U.S. 242, 97 L.Ed. 983, 73 S.Ct. 600; Shipman v. DuPre, 339 U.S. 321, 94 L.Ed. 877, 70 S.Ct. 640; Stainback v. Mo Hock Ke Lok Po, 336 U.S. 368, 93 L.Ed. 741, 69 S.Ct. 606; A.F. of L. v. Watson, 327 U.S. 582, 90 L.Ed. 873, 66 S.Ct. 761; Alabama State Federation of Labor v. McAdory, 325 U.S. 450, 89 L.Ed. 1725, 65 S.Ct. 1384; Spector Motor Services, Inc. v. McLaughlin, 323 U.S. 101, 89 L.Ed. 101, 65 S.Ct. 152; Chicago v. Fieldcrest Dairies, Inc., 316 U.S. 168, 86 L.Ed. 1355, 62 S.Ct. 986; Railroad Com. of Texas v. Pullman Co., 312 U.S. 496, 85 L.Ed. 971, 61 S.Ct. 643. *But there are no federal constitutional questions raised in this case.*" [Also see *Markham v. Allen*, 326 U.S. 490 (1946); *Williams v. Green Bay & W.R. Co.*, 326 U.S. 549 (1946); *Spiegel v. Commissioner*, 336 U.S. 701 (1949).]

It is no solace to Petitioners that they happen to be elected officers of the State of Florida, for *this is not a case which attempts to compel them to exercise any official discretion or policy-making authority.* All Respondent seeks is the performance of clear legal obligations. In Florida, the law is clear that the contract claims of state officers "appeal to the conscience of a chancellor with the same, but with no greater or less force than . . . those of an individual under like circumstances." *Daniell v. Sherrill*, 48 So.2d 736, 739 (Fla. 1950). The Florida Supreme Court went on to say:

> "If we say with Mr. Justice Holmes, 'men must turn square corners when they deal with the Government,' it is hard to see why the Govern-

> ment should not be held to a like standard of rectangular rectitude when dealing with its citizens." *Ibid.*

In a case dealing with the authority of the Trustees to enter into a certain contract, the Florida Supreme Court noted:

> A trustee, who comes into a court of equity alleging want of power and illegality in his contracts . . . and who asks the Court, for this reason, to deny relief to a party who alleges performance upon his part, occupies a position which cannot be commended. *Trustees of the Internal Improvement Fund v. Gleason*, 15 Fla. 384, 397-98 (1875).

Thus, it is apparent that an action to enforce a contract Petitioners have entered is recognized in Florida law not to be an action which in any way involves the exercise of sovereign power. In such circumstances, it is not an action which is in any wise similar to those in which abstention has been found proper.

In *Allegheny v. Frank Mashuda Co.*, 360 U.S. 185 (1954), the validity of County eminent domain action was in issue, and abstention was held improper:

> . . . [T]he fact that a case concerns a State's power of eminent domain no more justifies abstention than the fact that it involves any other issue related to sovereignty. Surely eminent domain is no more mystically involved with "sovereign prerogative" than a State's power to regulate fishing in its waters, Toomer v. Witsell, 334 U.S.

385, its power to regulate intrastate trucking rates, Public Utilities Comm. v. United States, 355 U.S. 534, a city's power to issue certain bonds without a referendum, Meredith v. Winter Haven, 320 U.S. 228, its power to license motor vehicles, Chicago v. Atchison, T. & S.F.R. Co., 357 U.S. 77, and a host of other governmental activities carried on by the States and their subdivisions which have been brought into question in the Federal District Courts despite suggestions that those courts should have stayed their hand pending prior state court determination of state law. *Id*, at 191-82, parallel citations omitted.[20]

The nature of the duty imposed by law on the federal judiciary to decide diversity cases, even when the going is a little tough, is best exemplified by *Meredith v. City of Winter Haven*, 320 U.S. 228 (1943):

> . . . But we are of opinion that the difficulties of ascertaining what the state courts may here-

[20]In a case decided the same day as *Mashuda*, the Court approved abstention in a situation involving the power of a Louisiana city to expropriate private property. *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25 (1959). (Justice Brennan, joined by Chief Justice Warren and Justice Douglas, dissented; Justice Stewart concurring in the judgment). In *Thibodaux*, the eminent domain statute involved had never been construed in any case even *like* the one at bar. 360 U.S. at 30. In this case, the Florida Supreme Court has been interpreting the power of the Petitioners to exercise dominion over lands held by them for 100 years (see *supra*, at pp. 24-33), including cases in which it was contended or conceded that Petitioners' acts were void or voidable. In this case, unlike *Thibodaux* or *Mashuda*, there is no issue which goes to the power of Petitioners to exercise sovereignty. It cannot be said too often that this is just a contract case. See dissent of Justice Brennan in *Thibodaux*, "There is no . . . possibility of conflict with the State . . . in the ordinary negligence or contract case in which a District Court applies state law under its diversity jurisdiction." 360 U.S. at 35.

after determine the state law to be do not in themselves afford a sufficient ground for a federal court to decline to exercise its jurisdiction to decide a case which is properly brought to it for decision.

The diversity jurisdiction was not conferred for the benefit of the federal courts or to serve their convenience. Its purpose was generally to afford to suitors an opportunity in such cases, at their option, to assert their rights in the federal rather than in the state courts. In the absence of some recognized public policy or defined principle guiding the exercise of the jurisdiction conferred, which would in exceptional cases warrant its non-exercise, *it has from the first been deemed to be the duty of the federal courts, if their jurisdiction is properly invoked, to decide questions of state law whenever necessary to the rendition of a judgment.* Commonwealth Trust Co. v. Bradford, 297 U.S. 613, 618, 80 L.Ed. 920, 924, 56 S.Ct. 600; Risty v. Chicago, R.I. & P.R. Co., 270 U.S. 378, 387, 70 L.Ed. 641, 650, S.Ct. 236; Kline v. Burke Constr. Co., 260 U.S. 226, 234, 235, 67 L.Ed. 226, 232, 43 S.Ct. 79, 24 ALR 1077; McClellan v. Carland, 217 U.S. 268, 281, 282, 54 L.Ed. 762, 767, 30 S.Ct. 501. *When such exceptional circumstances are not present denial of that opportunity by the federal courts merely because the answers to the questions of state law are difficult or uncertain or have not yet been given by the highest court of the state, would thwart the purpose of the jurisdictional act.* 320 U.S. at 234-35.

So it is here that the plaintiff's choice of the federal forum, and the purpose of this jurisdictional act, would be thwarted by refusal of this Court to finally put an end to this controversy. No good reason exists to continue the litigation or to shunt it into state courts.

QUESTION C (STATED BY PETITIONERS)

WAS THE ORDER OF THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT, DENYING THE PETITIONERS' MOTION TO REMAND WITH LEAVE TO MOVE TO VACATE THE DISTRICT COURT'S JUDGMENT A DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS TO SUCH AN EXTENT AS TO REQUIRE THE EXERCISE BY THIS COURT OF ITS SUPERVISORY POWERS?

Rule 19, *Supreme Court Rules*, indicates "the character of reasons which will be considered" in granting certiorari review, and refers to cases in which a court of appeals "has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision." Petitioners do not cite any cases of this Court for the proposition that denial of a post-opinion motion (which itself is not a procedure contemplated by the federal appellate rules) is such a drastic departure from the ordinary course of judicial proceedings as to require supervision by this Court. Cases in which the Court has issued certiorari to effect supervision illustrate the limited nature of review contemplated by this certiorari ground.

The departure characterized by the rule is such as would lead to a lack of confidence in the judicial system itself, if sanctioned. Typical cases involved the admission of tainted testimony in criminal proceedings [*Mesarosh v. United States*, 352 U.S. 1 (1956); *Communist Party of U.S.A. v. Subversive A.C. Bd.*, 351 U.S. 115 (1956)] perversion of constitutional rights by lower courts such as the right to be free from unreasonable search and seizure [*Chapman v. U.S.*, 365 U.S. 610 (1961)]; loss of the Seventh Amendment right to a jury trial [*Beacon Theatres v. Westover*, 359 U.S. 500 (1959)]; and total misconstruction of United States statutes [*United States v. Rizzo*, 297 U.S. 53 (1936)]. The Court has utilized the procedure to engage in a sort of judicial fine-tuning. It is not a procedure used to overturn discretionary judgments made within the bounds of discretion, but rather a procedure used to correct occasional flagrant abuses of discretion or actual disobedience of law.

> The untained administration of justice is certainly one of the most cherished aspects of our institutions. Its observance is one of our proudest boasts. This Court is charged with supervisory functions in relation to proceedings in the federal courts. *Communist Party of U.S.A. v. Subversive A.C. Bd.*, supra, 351 U.S. at 124.

Surely it could not be said that the administration of justice has been "tainted" by the Court of Appeals' denial of the post-opinion "Motion to Remand, etc." made by the Petitioners. The rules do not contemplate such a procedure, but it was considered by the Court in an abundance of fairness to Petitioners. The motion itself consisted of argument on alleged facts which were *dehors* the record,

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and on numerous assumptions which are not even supported by the motion and its attachments. What the motion amounts to is a request to compel the District Court to exercise its "discretion"[21] again. Implicit in that motion is the fact that the District Court would continue to have discretion to decide the case precisely the way it did at first. The motion, and the petition for certiorari to review denial of it, do not point to *any* legal duty of the Court of Appeals or the District Court to do something which allegedly has been omitted. The unusual thing about the Court of Appeals' decision lies in the fact that they considered the motion at all. Its denial surely cannot be said to taint the administration of justice or drastically depart the ordinary course of judicial proceedings.

No further legal argument should be necessary in opposition to the issues raised in this part of this petition. However, the inflammatory nature of the so-called "factual" basis for the "Motion to Remand, etc.", and for issuance of certiorari to review its denial, compels us to set the record straight.

In the first place, the other lands upon which Respondent secured options to purchase have never been nor could they ever be established to have been "less desirable" than the lands here involved. Moreover, even if such were the case, it does not establish that the price bid for the lands involved in the subject Lease-Option with the Petitioners was "grossly unfair and inequitable." Respondent, as the record reflects, was the higest bidder for the lands owned

[21]When a plaintiff establishes the essential elements of a specific performance claim, the "discretion" of the chancellor is limited. In fact, Florida law says the right to such relief may not be denied. *Sonpayrac v. Lewis*, 112 So.2d 52 (Fla.App. 1959); *Perry v. Benson*, 107 So.2d 213 (Fla.App. 1958); *Humphreys v. Jarrell*, 101 So.2d 401 (Fla. App. 1958).

by Petitioners and/or their predecessors in office and Petitioners were at complete liberty to reject such bid "if the price offered is not satisfactory to those making the sale." Section 270.08, *Fla. Stats.* As the Court of Appeals concluded (453 F.2d at p. 833):

> * * * The defendants presented to the district court no reason to characterize the option purchase price as unreasonable or inequitable at the time the lease was executed. We find no reason to suppose that the defendants' predecessors were so inexperienced or uninformed in 1961 that the present defendants should be insulated from a decree of specific performance.

Even had the existence of such other options to purchase and the conveyances pursuant thereto, *which were long a matter of public record*, been relevant and material upon any issue of inadequacy of purchase price, such evidence was hardly "newly discovered".[22] The same holds true for the 1968 valuation for ad valorem tax purposes allegedly placed on the improvements erected by Respondent upon a portion of the subject lands, the initial cost of which was over $2,000,000.[23] The petition of Respondent for a reduction in tax assessment upon such improvements also is and has been a matter of public record since 1968.[24]

[22]Appendix to Petition, p. A62.

[23]See Statement of Case, *supra*, p. 8.

[24]It is not difficult to understand why the 1968 tax value of the improvements was low, despite their initial cost. There had occurred a cut-back in federal funds being spent in solid rocket fuels after Respondent's manufacturing plant and improvements had been in operation for some time (453 F.2d at p. 831), resulting in non-use of the improvement. The fair market value of a rocket test caisson is not high when rockets aren't being developed or tested. Respondent has two million of its dollars invested in that caisson, though, and the caisson will be of considerable value to Respondent if it is a successful bidder on the space shuttle program.

This cannot detract from the many "equities" recognized by the District Court for decreeing specific performance. 318 F. Supp. at p. 65.

The requisite for concluding that evidence is "newly discovered" is that the failure to produce any such evidence to the lower court must not have been caused by the moving party's lack of due diligence. The evidence must be such as was not and could not by the exercise of due diligence have been discovered in time to present in the original proceeding and it must be of such a material and controlling nature as would probably induce a contrary decision. 7 *Moore's Federal Practice*, §60.23[4]. This so-called "evidence", asserted for the first time by Petitioners in their Motion To Remand, etc." in the Court of Appeals and in their petition for writ of certiorari here, fails to fall within this requisite category. Over eight months intervened between the filing of Respondent's motion for summary judgment and the entry of summary final judgment for Respondent, during which two separate hearings (February 18, 1970 and August 28, 1970) were conducted, without any attempt by Petitioners to present to the District Court any such evidence as that which Petitioners' now characterize as "newly discovered."

Finally, in their petition for writ of certiorari,[25] as in their "Motion To Remand, etc." in the Court of Appeals.[26] Petitioners for the first time assert that Respondent misrepresented a need for all of the subject lands for the purpose of establishing a manufacturing plant and associated facilities to be used in the production activities designed to strengthen the defense posture of this nation. This, they

[25]P. 21, Petition for Certiorari.
[26]Appendix to Petition, p. A66.

assert, must be concluded from the fact that approximately 23,040 acres of the subject lands are located some nine to thirteen miles distant from other of the subject lands on which the manufacturing plant and associated facilities are constructed.[27] However, if rocket engines are to be developed, tested and manufactured, the rockets and rocket fuel must be stored somewhere, and in a fashion mindful of the needs of the government and the safety of the plant workers and the general public. An ordinary, reasonable and prudent rocket builder would undoubtedly provide for himself a place to store rockets and rocket fuel which is safely removed from other volatile material as much as is reasonably possible. Hence, a facility which contemplates various uses of rocket fuel must occupy a large tract of land.

While Petitioners are careful to point out that a large portion of the subject lands are located some nine to thirteen miles from the manufacturing plant and associated facilities, they are not quite so careful to point out that Respondent acquired contiguous sections of land across that very nine to thirteen mile stretch, and which *connect* the subject parcels so that, in fact, the lands in question here are contiguous at all points to other land owned by the Respondent. This is shown by Petitioners own map attached to their "Motion To Remand, etc.,"[28] and it has been apparent in this record at all times from the legal description of the subject lands, which by themselves are in various tracts and not contiguous to each other, though the subject lands are contiguous to other parcels which Respondent owns.

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[27]Appendix to Petition, p. A66.

[28]Appendix to Petition, p. A89.

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Petitioners' insinuation that Respondent acquired the Lease-Option on the subject lands with no intention of using all of such lands in connection with its rocket testing, development and production facilities is simply not true. Respondent had contracts with NASA for the testing and development of both solid[29] and liquid[30] fuel rocket engines. The "260" and "M-1" were contemplated as first and second stage engines for a vehicle capable of reaching the moon. Toward this end, as the Court of Appeals recognized in its opinion, Respondent expended some $21,200,000 for building and equipment for development of solid rocket fuels, $2,000,000 of which was on land leased by Respondent from Petitioners, and the balance invested in contiguous lands owned by Respondent, for which it paid some $7,100,000.[31] This initial, but enormous capital expenditure in solid fuel rocket engine development was made primarily in the southern-most portion of the subject lands and surrounding lands owned by Respondent, but that fact is hardly proof that the balance of the subject lands were acquired for some nefarious reason. As is evident from the response we filed to this motion, the program contemplated by Respondent and NASA of both solid and liquid fuel rocket stages call for all of the property Respondent acquired, both from Petitioners and private parties, and Respondent planned use of such property in its entirety. (Appendix to Petition, p. A107).

Recent announcement of the space shuttle program has renewed and greatly enhanced prospects for use of the Dade tract, including the subject lands, in connection

[29]The "260."

[30]The "M-1."

[31]453 F.2d at p. 825.

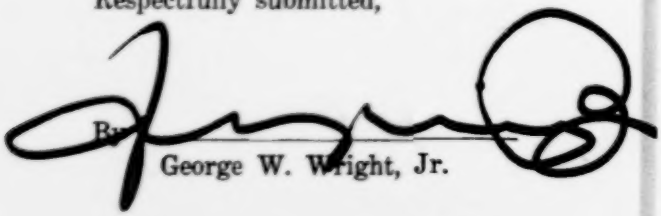
with production of the shuttle vehicle, if Aerojet is a successful bidder. As noted in the Statement of the Case (*supra*, p. 8), the space shuttle vehicles will be propelled by solid fuel, and will be launched from Cape Kennedy. The Respondent's Dade County tract is relatively close to the launch site. The timely announcements concerning the space shuttle demonstrate that Petitioners' endeavors to back out of this contract are shortsighted as well as unlawful.

Certainly, the Court of Appeals' denial of Petitioners' newly-conceived "Motion To Remand, etc." cannot be said to constitute such an extreme departure from the accepted and usual course of judicial proceedings as to render necessary the exercise by this Court of its supervisory powers.

CONCLUSION

For the foregoing reasons, and upon the authorities cited, the Petition for Writ of Certiorari should be denied. The Petition does not demonstrate any ground for reviewing the Court of Appeals' judgments herein, nor is any basis demonstrated for the exercise of this Court's supervisory powers.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and complete copy of the above and foregoing Reply to Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit was mailed this 30 day of June, 1972 to ROBERT SHEVIN, Attorney General of the State of Florida, Counsel for the Board of Trustees of the Internal Improvement Trust Fund and Counsel for the Board of Education, Petitioners, The Capitol, Tallahassee, Florida and MARION E. SIBLEY, Special Assistant Attorney General, Appointed to Appear for the Petitioners, 605 Lincoln Road, Miami Beach, Florida 33139.

Of Counsel

COPY

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

in the

Supreme Court

of the

United States

CASE NO. 71-1505

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, et al., as and constituting the members of the BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND and the BOARD OF EDUCATION of the State of Florida,

Petitioners,

vs.

AEROJET-GENERAL CORPORATION,

Respondent.

REPLY TO THE BRIEF OF THE RESPONDENT AEROJET-GENERAL CORPORATION WITH APPENDIX

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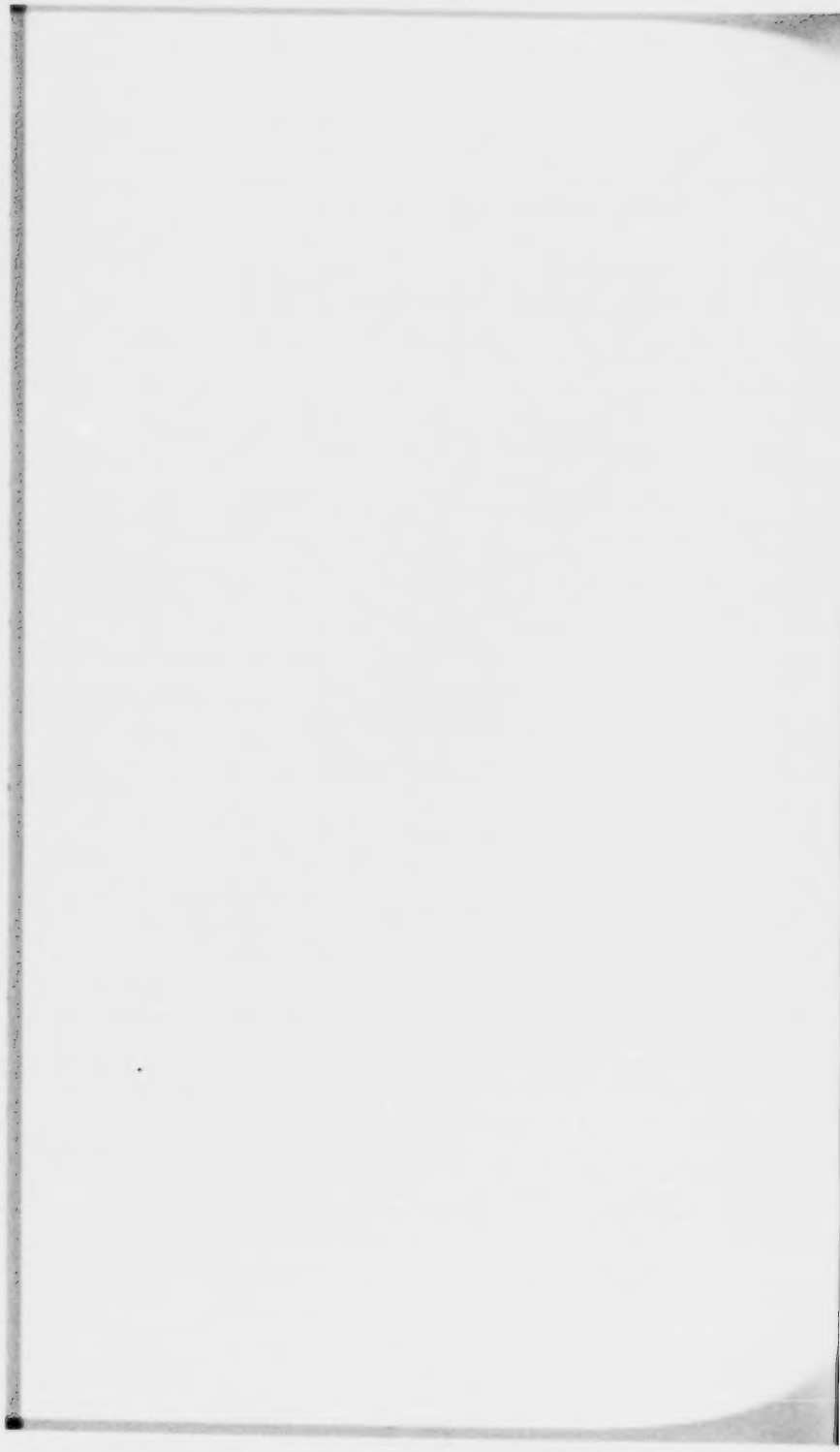

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in the
Supreme Court
of the
United States

CASE NO. 71-1505

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, et al., as and constituting the members of the BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND and the BOARD OF EDUCATION of the State of Florida,

Petitioners,

vs.

AEROJET-GENERAL CORPORATION,

Respondent.

REPLY TO THE BRIEF OF THE RESPONDENT AEROJET-GENERAL CORPORATION

REPLY TO THE RESPONDENTS' CONTENTION THAT THE TRUSTEES HAVE POWER TO GRANT OPTION

Unless otherwise stated, emphasis has been supplied by the Petitioners to material quoted.

In the decision of the *New Haven Inclusion Cases*, 399 U.S. 382, 90 S.Ct. 2054 at page 2104, the Supreme Court

of the United States indicates that the failure to respond to a reply brief may be taken as an abandonment of a petitioner's contention, impels the petitioners to respond to the brief of Aerojet.

The Respondent, in its brief, urges (at pages 4, 5, and 13) that the administrative construction of the Petitioners' powers is entitled to "great persuasive force." In this the Petitioners concur and point with confidence to the fact that never in the existence of the Trustees of the Internal Improvement Trust Fund has there ever been an option to purchase public land granted by the Trustees except in the case sub judice. Such administrative construction proves the contention that the option was granted without statutory authority.

In this regard the Court of Appeals failed to recognize the force of the opinion of the Supreme Court of Florida in the case of *Watson v. Holland*, 20 So.2d 388 (Fla. 1945). In that case the Supreme Court of Florida said:

> "Section 270.07, F.S. 1941, F.S.A., originated from Section 1 of Chapter 5943 of the Laws of 1909, being 'An Act to Provide for the Sale of Lands That Are Now or May Hereafter Be, Vested in the Trustees of the Internal Improvement Fund of the State of Florida and the State Board of Education of the State of Florida.' Such Chapter not only contemplated the advertisement of lands to be so sold, conveyed or disposed of, but also that such lands should be sold to the highest bidder upon sealed bids not to be opened until the day of sale provided in the advertisement, at

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which time such bids should be opened in the presence of the Trustees of the Internal Improvement Fund if they were making the sale, or in the presence of the State Board of Education if it were making the sale. The Legislature was then dealing with the general subject of disposing of the fee simple title to its lands just as it was when in Chapter 6159, Act of 1911 (see Section 270.11, F.S. 1941, F.S.A.) it was dealing with the subject of reserving for the benefit of the people of this state 'an undivided one-half interest in, and title in and to, an undivided one-half interest in all the petroleum that is or may be in, on, or under said above described land * * *', referring to the contracts for sale and deeds for the sale of lands that might thereafter be executed by the Trustees of the Internal Improvement Fund of the State of Florida and the State Board of Education of the State of Florida.

* * *

"A mere consideration of the history, purpose and intent of the Legislature demonstrates that the leasing of lands and water bottoms for the highly specialized purpose of producing oil, gas and other minerals as contemplated by Section 270.28, F.S. 1941, F.S.A., is a thing separate, distinct and apart from the sale, conveyance and disposition of the fee simple title to lands contemplated in Section 270.07, F.S. 1941, F.S.A."

In light of this decision, it is clear that the Trustees are authorized only to sell the fee simple title to public lands under Section 270.07, F.S., and not a lease or an option to purchase.

An examination of all of the sections of Chapter 270, F.S. reveals that the legislature did not intend to expand in any way the trustees' power of sale of public land. Thus the notice required by Section 270.07, F.S., shall state "for the full term of thirty days prior to *such sale*." Moreover, Section 270.08, F.S., in dealing with the type of transaction referred to in Section 270.07, F.S., requires that the Trustees decide or "regard it expedient to *sell* any of the lands"; that there be a notice of "*such sale*"; that such notice be published "in the county or counties where such land to be *sold* are situated"; that the notice shall "state the *terms of sale*"; and that bids will be received from the date of notice "*until the day of sale*". If the Trustees "are making the *sale*", or if the State Board of Education is "to make *such sale*", proof of publication of such notice shall be filed "immediately after the expiration of the time of *said sale*."

Section 270.09, F.S., permits any person the privilege of filing an offer with the board "making *the sale*". No bids shall be opened "until the day of *sale* provided in said notice." After the opening of the bids the Trustees or the Board "shall *sell* to the highest bidder, upon satisfactory terms, for cash or otherwise" and the Trustees shall "make, execute and deliver *a deed* or *deeds* to the *purchaser* or *purchasers* of such lands, in the manner now provided by law and in accordance with the terms agreed upon." A record of "all *such sales* shall be kept by the said trustees."

Not less than eleven times Section 270.07, 270.08 and 270.09, F.S., refer to the transaction therein contemplated as *a sale*.

The case of *Watson v. Holland*, *supra*, and the language of the Competitive Bidding Statute denies the power of the Trustees to "sell and convey" an option to purchase.

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The District Court of Appeal of Florida, Second District, in the case of *Warren v. City of Leesburg*, 203 So.2d 522, 526, stated:

> "Also, the weight of authority holds that a mere option to purchase land (or repurchase land) does not vest the holder of such option with any interest, legal or equitable, in the land itself. . . ."

The Respondent contends that the Competitive Bidding Statute dealing with the sale of public land and the Competitive Bidding Statute dealing with the expenditure of public funds have two different sets of rules. That unfair bid specifications when the state is spending public funds renders the contract void but that unfair bid specifications when the state is selling public land would not render the contract void.

The purpose, of course, of both bid statutes is to prevent favoritism and the same rules obviously apply. The Court of Appeals stated in this regard: (A. 60)

> "We regard it as significant that, despite appellants' intimation that the claimed ambiguity of the notice for bids was designed to assure the plaintiff that it would get the property, they fail to allege any fraud, *favoritism*, collusion or corruption between Aerojet and the defendants' predecessors in office."

This statement of the Court of Appeals rebuts itself. If the specification for bids was "designed to assure the plaintiff it would get the property," then that is the rankest form of favoritism.

The Respondents urge (Respondent Brief p. 30) that the Petitioners have the implied statutory power to grant an option to purchase public lands because they are authorized "to make such arrangements for the drainage of swamp and overflowed lands as in their judgment may be most advantageous. . . . §253.18, F.S." An examination of the option to purchase discloses that it has not the slightest relationship to an arrangement "for the drainage of swamp and overflowed lands."

REPLY TO THE RESPONDENTS' CONTENTION THAT THE PETITIONERS ARE EQUITABLY ESTOPPED

The Respondent urges that legal and equitable estoppel is applicable to the Petitioners (Respondent Brief p. 31), which precludes the disavowal of this unauthorized option to purchase. This argument is answered by the Supreme Court of Florida in the case of *Edwards v. Town of Lantana*, 77 So.2d 245, 246 (Fla., 1955), in which the Court held:

> "We have not ignored appellants' argument that the construction of the roadway, installation of water mains and erection of the ornaments were, in the vernacular, a 'package deal' and that the municipality should not be allowed to receive the benefits from the construction of the streets and installation of mains and repudiate the part of the contract providing for the ornaments. In this attempt, so they insist, the doctrine of estoppel should be invoked.
>
> "Although the argument appeals to us from a moral standpoint, we have the conviction that we would veer widely from the course defined by the

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authorities if we held that rugged justice demanded in this particular case that the appellee should be held to all its bargain. To reach the point, we would be compelled to rule that the appellee was estopped to deny the validity of the contract, and the weight of authority forbids the position. Donovan v. Kansas City, 241 Mo. 430, 175 S.W.2d 874; Tullos v. Town of Magee, 181 Miss. 288, 179 So. 557. In the case of Texas Co. v. Town of Miami Springs, Fla., 44 So.2d 808, we invoked the doctrine of estoppel against a municipal corporation but the fundamental fact there was not the same as the fundamental fact here. *In the cited case the municipality had the power to act as it did, but acted in such fashion as to create an estoppel; here the town acted beyond its prescribed power.*"

In the case of *Hoskins v. City of Orlando*, 51 F.2d 901 (5th Cir. 1931), the United States Court of Appeals, at page 906 stated:

"Nor can estoppel be invoked against a municipality to validate that which is unlawful or wholly ultra vires."

In the case of *Purdy v. Covert*, 151 So.2d 891, 893 (Fla.App.2d, 1963), the Court said:

"The 'stipulations' and 'waivers' are unimportant to a consideration of the question in this case. Public Officers were involved and the moneys were public funds. Public funds may not be prejudiced or impaired by waivers or agreements

> which ignore regulations adopted for the protection of the fund. Otherwise, a 'give-a-way' of public funds might result."

In the case of *State ex rel. Nuveen v. Greer*, 88 Fla. 249, 102 So. 739, 744, the Supreme Court of Florida said:

> "The doctrine of estoppel is part of common law that is in force in this state, and it should be appropriately applied when the facts in a litigated case justify it. But the principal of estoppel does not operate to confer authority, though it may under some circumstances be invoked to preclude a denial that authority conferred was duly exercised. See 19 R. C. L., p. 1000."

Under the statute and under the oath of office taken by the Trustees, they are both legally and morally obligated to decline to perform a contract that is unauthorized by statute. Their failure to do this would constitute a breach of their statutory trust. Said trustees have a clear duty to deal fairly and in good faith with the beneficiaries of their trust and to refuse to recognize all illegal and unauthorized contracts, especially in view of the fact that Aerojet knew, at the time it applied for this ten-year option, or should have known at that time, the extent of the authority of the Trustees.

> "Although a private agent, acting in violation of specific instructions, yet within the scope of his general authority, may bind his principal, the rule as to the effect of a like act of a public agent is otherwise, for the reason that it is better that an individual should occasionally suffer from the

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mistakes of public officers or agents, than to adopt a rule which, through improper combinations, or collusion, might be turned to the detriment and injury of the public. . . ."

"Individuals as well as courts must take notice of the extent of authority conferred by law upon a person acting in an official capacity, and the rule applies in such a case that ignorance of the law furnishes no excuse for any mistake or wrongful act." . . . (Citations omitted.)

William H. Whiteside, et al. v. United States, 93 U.S. 247, 258, 23 L.Ed. 882.

A person dealing with public boards and bodies must at his peril determine that the officers executing contract, note, lease or option had competent legal authority to bind the public body or board for which they undertook to act. *First National Bank of Key West v. Board of Public Instruction of Dade County*, (Fla. 1933) 145 So. 203. In that case the Supreme Court of Florida said:

"The judgment of the court below, entered upon sustaining defendant's demurrer to plaintiff's declaration in a suit brought to enforce promissory notes executed by the board of public instruction of Dade county, in consideration of the purchase price of lands for a school site, should be affirmed on the authority of Babcock v. Board of Public Instruction for Dade County (Fla.), 140 So. 644 decided at the last term, unless the fact that plaintiff, being a bona fide third person holder of the notes for value, has a greater right to enforce same than did the original payee.

"[1] The rule on this subject is that the protection that commercial usage throws around commercial paper cannot be used to establish the authority by which it was originally issued.

"[2] A purchaser of commercial paper executed by the board of public instruction of a county must at his peril see that the officers executing same had competent legal authority to bind the public corporate board for which they undertook to act. See Pierce v. United States, 7 Wall. 666, 19 L.Ed. 169."

The Respondent relits upon the case of *Meredith v. City of Winter Haven*, 320 U.S. 228, 64 S.Ct. 7 (1943). In that case the Supreme Court of the United States indicated that it would seek State Court determination of State questions which "appraise or shape the domestic policy of the state governing its administrative agencies."

In the case sub judice the question to be decided is the power and authority of an administrative agency of the State of Florida and the manner in which the agency must conduct itself in the sale and disposition of public lands.

The Respondent cites the case of *Watson v. Caldwell*, 35 So.2d 125 (Fla., 1948) to establish that the Petitioners had implied statutory powers. The Court there was dealing with the power of the School Board to exchange land in order to permit the Trustees of the Internal Improvement Trust Fund to comply with the legislative act designed to aid in the establishment of the Everglades National Park. It has nothing whatever to do with the granting of an option to purchase public lands. In fact the Court said:

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"Section 270.07 et seq. controls the sale of public lands in the open market and have on application to an exchange by the state or its agencies unless so stated by the terms of the act. 49 C.J. Section 653. This was not a 'sale' but an exchange in kind to effectuate a definite legislative purpose which we shall now discuss more fully."

The instruments executed by the Trustees granting grazing leases and leases of all kinds were specifically authorized by the provisions of Section 253.45 F.S.[1]

[1]Section 253.45, F.S.

253.45 Sale or lease of phosphate, clay, minerals, etc., in or under state lands.—

(1) The board of trustees of the internal improvement trust fund may sell or lease any phosphate, earth or clay, sand, gravel, shell, mineral, metal, timber or water, or any other substance similar to the foregoing, in, on, or under, any land the title to which is vested in the state, the department of general services, the department of natural resources, the game and fresh water fish commission, the state board of education, or any other state board, department, or agency; provided that the board of trustees may not grant such a sale or lease on the land of any other state board, department or agency without first obtaining approval therefrom. No sale or lease provided for in this section shall be allowed on hard-surfaced beaches that are used for bathing or driving and areas contiguous thereto out to a mean low water depth of three feet and landward to the nearest paved public road. Any sale or lease provided for in this section shall be conducted by competitive bidding as provided for in §§253.52, 253.53 and 253.54. The proceeds of such sales or leases are to be credited to the board of trustees, board, department or agency which has title or control of the land involved.

(2) The board of trustees of the internal improvement trust fund or any other state agency authorized to grant leases under this section shall specify in each such lease, in clear and precise terms, the particular minerals for which the lessee is permitted to drill or mine and the manner in which the same may be extracted.

REPLY TO THE RESPONDENTS' CONTENTION THAT CERTIORARI NOT GRANTED UNLESS THE COURT OF APPEALS FLAGRANTLY ABUSED ITS DISCRETION OR ACTUALLY DISOBEYED THE LAW

Respondent states it chose the "Federal forum" because "Petitioners are politically elected officials, as are the Judges of Florida's State Courts. The law of Florida clearly defines the rights of parties who litigate with Petitioners, and *Respondent felt obliged to bring this action in federal court to insure that the law of Florida would be dispassionately applied to this case.*" (Respondent's Brief, page 15.) Respondent further states it chose "a forum which will apply law and not politics to the case at hand." (Respondents Brief p. 33)

The Respondent contends that the certiorari in this case should not be granted unless there was "flagrant abuses of discretion or actual disobedience of law." (Respondents' Brief p. 17) Actually the failure of the Court of Appeals to apply the rules of law established by the Supreme Court of Florida in competitive bidding cases violates the provisions of Section 1652, USCA, Title 28, which provides as follows:

> "The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States in cases where they apply."

In the case of *Tipton v. Socony Mobil Oil Company, Inc.*, No. 200, 84 S.Ct. 1, the Supreme Court of the United

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States granted certiorari because of the erroneous admission of evidence which was held to be harmless error by the United States Court of Appeals, Fifth Circuit. In that case the Supreme Court of the United States said:

> "The Court of Appeals for the Fifth Circuit unanimously held it error to have admitted the evidence of other compensation benefits, but with one Judge dissenting, found the error harmless. We grant the petition for a writ of certiorari and vacate the judgment."

We respectfully suggest that the Court of Appeals completely departed from the accepted practice, the tradition and rule enunciated by it and by every other United States Court of Appeals that in a diversity of citizenship case where there is no state decision on the precise point, the appellate court will apply the general law on the subject matter.

The United States Court of Appeals, Fifth Circuit, in the case of *Jackson v. Sam Finley, Inc.*, 366 F.2d 148 (1966), held:

> "Where the highest court of the state has not authoritatively spoken, the federal court may assume that state law will accord with generally accepted principles of substantive law."

In the case of *Marchessault v. National Grange Mutual Liability Company*, 229 F.2d 698, the United States Court of Appeals, Second Circuit, stated:

> "As there is no local decision, we may assume that Vermont law accords with the general principles of the law of Contracts as applied in the cases above cited."

In the case of *Adam Hat Stores, Inc. v. Lefco, et al.*, 134 F.2d 101, the United States Court of Appeals, Third Circuit, said that where there is no decision of the Courts of Pennsylvania in a diversity case:

> "In that situation, the only course open to a federal court is to look to the general law as being the most persuasive datum available for ascertaining the pertinent local law."

In the case of *Aaron v. Florida Gas Transmission Company*, 412 F.2d 802 the United States Court of Appeals, Fifth Circuit, stated:

> "There is no area of the law more appropriate for the application of the Erie doctrine than land contracts and title law."

Again in the case of *Makariw v. Rinard*, 336 F.2d 333 (1964), the United States Court of Appeals, Third Circuit, held that where the precise issue in the case was one of the first impression in Pennsylvania:

> "We are required to consider such approach to the problem as may be indicated by the Pennsylvania cases in the general field and to resort to general applicable principles to reach a conclusion consistent with Pennsylvania law."

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In the case of *Robert Porter & Sons, Inc. v. National Distillers Products Company*, 324 F.2d 202 (1963), the United States Court of Appeals, Tenth Circuit, held:

> "In matters concerning the law of a particular state where there are no state decisions in point, the determination by the trial judge will be accepted *if it is within the general authorities on the point.*"

Again the United States Court of Appeals, Tenth Circuit, in the case of *Fisher v. Firemen's Fund Indemnity Company*, 244 F.2d 194, said:

> "And since the state courts of Kansas have had no occasion to pass on the particular question presented we must rely on the general law of that state and authority we consider persuasive."

In *Fair et al. v. United States*, 234 F.2d 288, the United States Court of Appeals, Fifth Circuit, stated:

> "Failing to find determinant precedent in Texas law, it will be the duty of the trial Court to look to the general law fixing liability of private institutions for injuries to those towards whom they have a responsibility."

Looking now to a determination of whether the Court of Appeals, in the case sub judice, followed this well established rule in dealing with the authority of the Petitioners to grant the option to purchase, the Court of Appeals said: (A: 56)

> "Defendants in this connection cite no Florida decisions but refer us to rulings in courts in Texas, Georgia and Mississippi."

These three authorities are states located within the Fifth Circuit. Without the citation of a single ruling of law or the citation of a single authority to support its position, the Court of Appeals said: (A. 57)

> "Defendants' argument on this point is not persuasive. As officials of the State of Florida, the Defendants, are, of course, limited to activities that are within the statutory authority but we believe that the predecessors of the Defendants did not in 1961 exceed their warrants by executing the lease which serves as the basis for this law suit."

The question was whether or not the officials had the authority to give a valid option to purchase, where the statute granted them only the authority as Trustees "to sell or transfer" state lands. If the Court of Appeals had followed the rule which binds them to look to the general law, under the circumstances of this case they would have found that in England, the case of *Clay v. Rufford*, 5 De Gex & S. 768, denied the power of a trustee who may sell or transfer the authority to grant an option.

In the State of Delaware, in the case of *Equitable Trust Co. v. Delaware Trust Co., et al.*, 54 A.2d 733, it is held:

> "The grant of an option to purchase is neither a sale nor an agreement to sell property. . . . Ordinarily, the grant of that right is not essential to

the exercise of a power of sale, and a fiduciary, with a mere general power, *therefore, cannot grant a future option to buy the property.*"

In the case of *Trogden, et al v. Williams, et al.*, 56 S.E. 865, the Supreme Court of North Carolina held:

"The next question presented is: 'If the power of sale is conferred by the will, does this power include the power to execute an option for 90 days?' We concur with his honor that it does not."

In the case of *Hickok v. Still*, 31 A 1100, the Supreme Court of Pennsylvania stated:

"He did not sell the property, but entered into an agreement with the plaintiff which gave her the privilege of buying at any time within 3½ years. By this agreement she was entirely free; she was not bound to purchase. But he — and, in the event of his death, his successor in the trust — was bound to sell to no one else during the period fixed. The vice of the agreement is this: that it bound the trust estate, no matter what the detriment to it might be, without giving it any corresponding advantage. This was not a use of the power, but a surrender of it for the time."

In the case of *Loud v. St. Louis Union Trust Co.*, 281 S.W. 744, the Supreme Court of Missouri stated:

"In 28 Halsbury's Laws of England, p. 150, it is said:

> 'A trustee having a power or trust for sale cannot give to a lessee or other person an option of purchase for a definite sum at a future date, since, if the property increases in value in the meantime, the trust estate will lose the increment, while if it deteriorates, the option will not be exercised.'"

See also the case of *Adler v. Adler*, 118 S.E. 2d 456 (Georgia); *Potter Company v. C. C. Slaughter Cattle Co.*, 254 S.W. 775 (Texas Appeals); *American Oil Co. v. Marion County*, 192 So. 296, 299 (Mississippi); and *Bogart on Trusts* and a restatement of the law of trusts.

REPLY TO THE RESPONDENTS' ARGUMENT THAT MOTION TO REMAND IS INSUFFICIENT

The Respondent contends that the facts alleged in the motion to remand (A. 62-71) do not justify a remand of the cause for an evidentiary trial on its merits. The Court of Appeals, in citing authority for the power of a court of equity to grant specific performance of an option contract, quotes from Corbin as follows:

> "The agreed price is $5,000 and unless that is shown to be shockingly inadequate the chancellor's conscience will be quite at ease." (A. 54)

In this case it was shown that the price fixed for the property at the time of the execution of the option was shockingly inadequate. Proof of this is established by the brief of the Respondent (page 5) referring to the investment made by the Respondent. The Respondent says:

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"It invested an additional $7,100,000 in the purchase of land contiguous to the leased option land and which together form the entire Aeroject tract."

In its response to the motion to remand (A. 107), the Respondent shows it has made a total purchase of 76,500 acres in Dade County, Florida. Twenty Five Thousand Three Hundred Thirteen acres is the state land. This leaves 51,187 acres for which the Respondent admits it paid a purchase price of $7,100,000. This proves that the other land purchased, a large percentage of which was optioned by Aerojet before the State option and was actually conveyed in the spring of 1962 shortly after the State option, was acquired at a price of almost three times the option price of $50.00 an acre for the State land.

The Petitioners motion to remand was signed by the Honorable Reubin O'Donovan Askew, Governor of the State of Florida. The Respondent's response to this motion to remand (A. 94-107) does not contain a denial of the truth of the facts alleged in the motion. The Rules of Civil Procedure provide that facts alleged in the motion and not denied in the response stand admitted. The response to the motion does not deny the truth of the statement that the contiguous land purchased by the Respondent was less valuable than the State land.

The Respondent points out in its brief at page 8 that the Respondent ceased operations of its rocket fuel manufacturing plant in 1967. The attempted exercise of the opiton to purchase in September, 1969, was at a time when the Respondent had no intention of utilizing the State land in connection with the operation of its fuel manufacturing

plant. Plainly this was a purchase for land speculation only. In its response (A. 99) the Respondent urges that Aerojet's Sacramento, California, booster facility "is already bursting at its seams." The total area of the Sacramento plant (A. 107) is 9,000 acres. It can hardly be logically contended that the Dade County plant should consist of 8½ times more acreage than that needed in the Sacramento plant, namely 76,000 acres.

It is fair under these circumstances to assume that the State's land never was reasonably intended to be used in connection with "the establishment of a manufacturing plant and facility to be used in production activities designed to strengthen the defense posture of the United States which use of such public lands would serve the best interests of the people of the State of Florida."

We respectfully submit that the Petition for the Writ of Certiorari should be granted for the reasons hereinabove stated and because of events which have occurred subsequent to Petitioners' last filing, as in hereinafter set out.

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SUPPLEMENTAL BRIEF OF THE PETITIONERS, THE TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND, CALLING ATTENTION TO INTERVENING MATTER NOT AVAILABLE AT THE TIME OF PETITIONERS' LAST FILING, PURSUANT TO THE PROVISIONS OF THE UNITED STATES SUPREME COURT RULE 24 (5).

THE SUPREME COURT OF FLORIDA HAS THE QUESTION OF THE POWER OF THE TRUSTEES NOW PENDING BEFORE IT

The Petitioners, the Trustees of the Internal Improvement Trust Fund, attach to this brief certain documents and papers which have been filed in the Supreme Court of Florida and in the United States District Court in and for the Northern District of Florida, which deal directly with the question posed by the petition for certiorari. These documents have been included under a Supplemental Appendix and will be referred to by the initials "SA."

On petition of Metropolitan Dade County, Florida, the Supreme Court of Florida, June 12, 1972, issued its Alternative Writ of Mandamus directed to the Petitioners, the Trustees of the Internal Improvement Trust Fund. A true copy of the Alternative Writ is set forth in the Supplemental Appendix of the Petitioners, which is hereto attached at page 3. The issuance of the Alternative Writ was consented to by the Petitioners, the Trustees of the Internal Improvement Trust Fund. (SA 8). The Alternative Writ, in Florida, is the complaint and process and the initial pleading in a mandamus

proceeding. See Florida Rules of Civil Procedure, Rule 1.660 (b) and *City of Bradenton, et al. v. State ex rel. Perry*, 160 So.506 (1935).

In the Alternative Writ the County contends that under Section 253.111,[2]

> "The Board of Trustees of the Internal Improvement Trust Fund of the State shall not sell or convey any land to which they hold title unless and until they shall afford an opportunity to the County in which the land is situated to receive such land for public purposes . . ."

that it was entitled to an opportunity to receive such land for public purposes because:

> "This statute (a) denies the power of the Respondent State Board of Trustees to execute the alleged option, (b) even though the alleged option has been executed prohibits the Respondent Trustees from conveying title to such lands upon purported exercise of this option without first affording an opportunity to Petitioner to acquire these lands for public purposes, and (c) is the exercise of the police power to protect public lands from being conveyed to private interests when they are needed and desired by the County for public purposes."

---

[2]Section 253.111, F.S. (inpart)

253.111 Notice to board of county commissioners before sale.—The board of trustees of the internal improvement trust fund of the state shall not sell or convey any land to which they hold title unless and until they shall afford an opportunity to the county in which such land is situated to receive such land for public purposes on the following terms and conditions:

* * *

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On the 22nd day of June, 1972, the Petitioners, the Trustees of the Internal Improvement Trust Fund, in the cause sub judice, but respondents in the case in the Supreme Court of Florida, filed their return to the Alternative Writ. (SA 10). The Petitioners, the Trustees of the Internal Improvement Trust Fund, set forth in their return that a court appointed commissioner on June 16, 1972, deeded the property to Aerojet pursuant to the judgment of the lower Federal District Court, which had been affirmed by the United States Court of Appeals, Fifth Circuit.

At the same time on June 22, 1972, the Board of Trustees of the Internal Improvement Trust Fund filed a Third Party Complaint in said cause against Aerojet General Corporation vouching them in as an interested party. (SA 13).

On the 23rd day of June, 1972, Dade County petitioned for an amendment to the alternative writ extending the writ to Aerojet General Corporation and making it a party to the cause. (SA 17).

Thereafter, on June 24, 1972, the Respondent, Aerojet General Corporation, filed a suit in the United States District Court, Northern District of Florida, Tallahassee Division, against the Petitioners and the Board of County Commissioners of Metropolitan Dade County and the County Attorney for Metropolitan Dade County, Florida.

Thereafter, on June 29, 1972, Aerojet General Corporation filed an amended complaint (SA 20). Exhibit A attached to said amended complaint is shown in the original Record, Vol. I, pages 32-41, inclusive. Exhibit

C to said amended complaint is contained within the terms of the Alternative Writ of Mandamus. (SA 10). Exhibits D and E appear at (SA 13, 17). In said amended complaint Aerojet seeks to enjoin the County from prosecuting the mandamus proceeding in the Supreme Court of Florida and in said complaint it contends that the enactment of Section 253.111, F.S., "is unconstitutional as violative of Article I, §10, United States Constitution," in that it impairs the obligations of a contract.

On June 30, 1972, Aerojet filed a Motion for Leave to File Memorandum of Law as Amicus Curiae, (SA. 45) and on July 7, 1972, the Supreme Court of Florida granted the motion permitting counsel as amicus curiae to file a memorandum of law "on behalf of Aerojet General Corporation." (SA. 49)

The Supreme Court of Florida in said mandamus proceeding is directly faced with the problem of determining whether or not the Petitioners had the legal authority in 1961 to execute a ten-year option to purchase the public lands of Florida. If no such statutory authority exists or existed, then the enactment of Section 253.111, F.S., could not impair the obligations of the option contract because no valid option was given. In the event the Supreme Court of Florida determines that no valid option was given because of a lack of statutory authority of the Petitioners, it may well be that the Supreme Court of the United States will apply the rule enunciated in the following cases:

Wade v. Travis County, Texas, 174 U.S. 499, 19 S.Ct. 715, 43 L.Ed. 1060 and *Oakes et al. v. Mase*, 165 U.S. 363, 17 S.Ct. 345, 41 L.Ed. 746.

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In the cited cases it appears that after the Circuit Court of Appeals had rendered a decision on a State question in these diversity cases and while certiorari was pending in the Supreme Court of the United States directed to the decisions of the Circuit Court of Appeals, the precise State question was decided by the highest appellate court of the State, contrary to the decision of the United States Court of Appeals. Under such circumstances, the Supreme Court of the United States followed the decision of the State court and vacated the decision and judgment of the United States Court of Appeals.

It is quite conceivable that the Supreme Court of Florida will determine within a short while the question of whether the option contract was a valid, enforceable document.

CONCLUSION

The Petitioners point out that this case pends in a court of equity. In the event the judgment of the lower appellate court is quashed and the option agreement is declared void, this will not withdraw from the trial court the jurisdictional power to do equity between the parties.

Respectfully submitted,

ROBERT SHEVIN
Attorney General of the State of Florida, Counsel for the State of Florida Board of Trustees of the Internal Improvement Trust Fund and Counsel for the State of Florida Board of Education, Petitioners.
The Capitol
Tallahassee, Florida 32304

BY:_____
ROBERT SHEVIN

MARION E. SIBLEY
Special Assistant Attorney General, Appointed to appear for the Petitioners.
605 Lincoln Road
Miami Beach, Florida 33139

BY:_____
MARION E. SIBLEY

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CERTIFICATE OF SERVICE

THE UNDERSIGNED CERTIFIES that a true and correct copy of the above and foregoing "Reply to the Brief of the Respondent Aerojet-General Corporation" was furnished by mail to George W. Wright, Jr., Esq., Attorney for Respondent, 1600 First National Bank Building, Miami, Florida 33131, on this ____ day of _____, 1972.

MARION E. SIBLEY
(Of Counsel)

SUPPLEMENTAL APPENDIX OF PETITIONERS

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in the
Supreme Court
of the
United States

CASE NO. 71-1505

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, et al., as and constituting the members of the BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND and the BOARD OF EDUCATION of the State of Florida,

Petitioners,

vs.

AEROJET-GENERAL CORPORATION,

Respondent.

SUPPLEMENTAL APPENDIX OF PETITIONERS

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A.D. 1972

MONDAY, JUNE 12, 1972

CASE NO. 42,461

STATE OF FLORIDA, ex rel.
METROPOLITAN DADE COUNTY,
a political subdivision of the State of Florida,
Petitioner,

vs.

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, RICHARD B. STONE, Secretary of State of the State of Florida, ROBERT SHEVIN, Attorney General of the State of Florida, FRED O. DICKINSON, JR., Comptroller of the State of Florida, THOMAS D. O'MALLEY, Treasurer of the State of Florida, FLOYD T. CHRISTIAN, Commissioner of Education of the State of Florida, and DOYLE CONNOR, Commissioner of Agriculture of the State of Florida, comprising the Board of Trustees of the Internal Improvement Trust Fund, created under Chapter 253, F.S.,

Respondents.

ALTERNATIVE WRIT OF MANDAMUS

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA TO REUBIN O'DONOVAN ASKEW, GOVERNOR OF THE STATE OF FLORIDA, RICHARD B. STONE, SECRETARY OF STATE OF THE STATE OF FLORIDA, ROBERT SHEVIN, ATTORNEY GENERAL OF THE STATE OF FLORIDA, FRED O. DICKINSON, JR., COMPTROLLER OF THE STATE OF FLORIDA, THOMAS D. O'MALLEY, TREASURER OF THE STATE OF FLORIDA, FLOYD T. CHRISTIAN, COMMISSIONER OF EDUCATION OF THE STATE OF FLORIDA, AND DOYLE CONNOR, COMMISSIONER OF AGRICULTURE OF THE STATE OF FLORIDA, COMPRISING THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND, CREATED UNDER CHARTER, F.S. GREETING:

WHEREAS upon Petition filed herein by Petitioner-Relator it has been made to appear that:

1. Relator is Metropolitan Dade County, a political subdivision of the State of Florida.

2. Respondents are REUBIN O'DONOVAN ASKEW as the Governor of the State of Florida, RICHARD B. STONE as Secretary of State of the State of Florida, ROBERT SHEVIN as Attorney General of the State of Florida, FRED O. DICKINSON, JR. as Comptroller of the State of Florida, THOMAS D. O'MALLEY as Treasurer of the State of Florida, FLOYD T. CHRISTIAN as Commissioner of Education of the State of Florida, and DOYLE CONNOR as Commissioner of Agriculture of the

State of Florida, as and constituting the Board of Trustees of the Internal Improvement Trust Fund, created by Section 253.02, F.S.

3. Jurisdiction of this Court is invoked under the provisions of Article V, Section 4, Subsection 2 of the Constitution of the State of Florida, in that the Respondents are State officers and comprise the Board of Trustees of the Internal Improvement Trust Fund, a board within the purview and meaning of this constitutional provision.

4. Respondents as such Trustees are charged with the administration of the trust fund specifically described in Section 253.01, Florida Statutes. Under the provisions of Section 253.02, Respondent Trustees are granted the "power to sell and transfer said lands" referred to in Section 253.01 "to the purchasers and receive payment for the same."

5. In December, 1961 the prior Trustees of the Internal Improvement Trust Fund, not those presently constituting the Board, granted an option to Aerojet-General Corporation to purchase the following described property, situated in Dade County, Florida, which constitutes part of the property designated and described in Section 253.01, F.S.:

> Sections 1 through 14, Township 57 South, Range 37 East; Sections 17 through 20, Township 56 South, Range 37 East; Sections 24 through 36, Township 56 South, Range 37 East; W ½ of Section 5, Township 59 South, Range 38 East; Section 6, Township 59 South, Range 38 East.

This option was for a term of ten years and for a purchase price of $50. per acre. No legislative authority or

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power was then or ever has been vested in the Trustees to validly grant such an option.

6. Notwithstanding the existence of the alleged option, the Legislature of the State of Florida, in the exercise of its police power, enacted in 1065 Section 253.111, Florida Statutes, which provides in part as follows:

> "The Board of Trustees of the Internal Improvement Trust Fund of the State shall not sell or convey any land to which they hold title unless and until they shall afford an opportunity to the County in which the land is situated to receive such land for public purposes . . . ."

At the time of the enactment of this statute and at the present time, the Board of Trustees of the Internal Improvement Trust Fund hold title to the above described property. The alleged option, above referred to, cannot operate to oust the Legislature of its power to require the Trustees to afford to Dade County an opportunity to acquire these lands for public purposes. This statute (a) denies the power of the Respondent State Board of Trustees to execute the alleged option, (b) even though the alleged option has been executed prohibits the Respondent Trustees from conveying title to such lands upon purported exercise of this option without first affording an opportunity to Petitioner to acquire these lands for public purposes, and (c) is the exercise of the police power to protect public lands from being conveyed to private interests when they are needed and desired by the County for public purposes.

7. Respondent Trustees have not afforded to Dade County an opportunity to acquire these lands for public purposes and Respondents will in the near future convey

these lands to Aerojet-General Corporation pursuant to the terms of this option and under the order and judgment of the U.S. District Court for the Northern District of Florida and affirmed by the U.S. Court of Appeals for the Fifth Circuit.

8. Petitioner was not a party to the action in the U.S. District Court and the judgment rendered by the U.S. District Court is not binding upon the Petitioner and does not constitute a judgment forfeiting the Petitioner's right to acquire the above described lands for public purposes.

9. The right of Petitioner to acquire these lands for public purposes under the provisions of Chapter 253, Florida Statutes, is prior to and supersedes any right or interest of Aerojet-General Corporation to acquire these lands.

10. The interpretation and construction of this Florida Statute is purely a State matter governed by State law, the final arbiter of the meaning of this statute, the powers of Respondent Trustees, and the effect of Section 253.111 being vested in the Supreme Court of Florida.

11. The Relator, Metropolitan Dade County, has no other plain, complete, speedy, and adequate remedy.

12. The issues here involved are not issues of fact requiring the taking of testimony.

13. The Relator, Metropolitan Dade County, and the people of Dade County will sustain injury and damage if they are denied the use and ownership opportunity of this land.

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NOW, THEREFORE, this is to command you the Honorable REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, RICHARD B. STONE, Secretary of State of the State of Florida, ROBERT SHEVIN, attorney General of the State of Florida, FRED O. DICKINSON, JR., Comptroller of the State of Florida, THOMAS D. O'MALLEY, Treasurer of the State of Florida, FLOYD T. CHRISTIAN, Commisioner of Education of the State of Florida, and DOYLE CONNOR, Commisioner of Agriculture of the State of Florida, comprising the Board of Trustees of the Internal Improvement Trust Fund, created under Chapter 253, F.S., to afford Dade County the right to acquire these lands or show cause, by return and brief, if any you have, on or before July 5, 1972, why Peremptory Writ of Mandamus commanding the same to be done by you should not issue.

WITNESS the Honorable B. K. Roberts, Chief Justice of the Supreme Court of Florida, and the Seal of said Court at Tallahassee, the Capital, on this the 12th day of June, 1972.

/s/ Sid J. White

Clerk of the
Supreme Court of Florida.

A TRUE COPY
Attest:
SID J. WHITE, Clerk
Supreme Court of Florida

by (signature ilegible)

Deputy Clerk

IN THE SUPREME COURT OF
THE STATE OF FLORIDA

STATE OF FLORIDA ex rel METROPOLITAN DADE COUNTY, a political instrumentality the State of Florida,

Petitioner

vs.

REUBIN O'D ASKEW, et al, comprising the Board of Trustees of the Internal Improvement Trust Fund,

Respondents

[Received June 12, 1972]

WAIVER OF NOTICE OF HEARING AND CONSENT TO ISSUANCE OF ALTERNATIVE WRIT OF MANDAMUS

Comes now Respondents, by and through their undersigned counsel and waive notice of hearing and consent to issuance of an alternative writ of mandamus in this case.

Robert L. Shevin
Attorney General

/s/ Barry S. Richard

Barry S. Richard

Deputy Attorney General
The Capitol
Tallahassee, Florida

/s/ M. Stephen Turner

M. Stephen Turner

General Counsel
Board of Trustees
Eliott Building
Tallahassee, Florida

I hereby certify that I have served a copy of the foregoing to Stuart L. Simon, County Attorney, Dade County Court House, Miami, Florida, this 9th day of June, 1972.

/s/ M. Stephen Turner

M. Stephen Turner

IN THE SUPREME COURT OF
THE STATE OF FLORIDA

CASE NO. 42,461

STATE OF FLORIDA ex rel METROPOLITAN DADE COUNTY, a political instrumentality of the State of Florida,

Petitioner,

vs.

REUBIN O'D. ASKEW, et al., comprising the Board of Trustees of the Internal Improvement Trust Fund,

Respondents,

[Received June 23, 1972]

RETURN OF RESPONDENTS

COME NOW respondents and for their return to the Alternative Writ of Mandamus issued in this cause answer the Petition by admitting the allegations of fact contained therein but allege the following as a defense to the petition.

I

At the time the Petition was filed, respondents were under order of the United States District Court for the Northern District of Florida, issued on June 7, 1972 pursuant to Rule 70, Federal Rules of Civil Procedure, to deed the land in question to Aerojet-General Corporation within fifteen days. The federal summary judgment in favor of Aerojet-General Corporation had been affirmed on appeal to the United States Fifth Circuit Court of

Appeals, [See Aerojet-General Corp. v. Askew, et al., 453 F.2d 819] and the mandate of that court issued. On June 16, 1972, said District Court directed that upon failure of respondents to execute a deed, the Clerk of the District Court for the Southern District of Florida would be designated as a commissioner and appointed to execute an appropriate deed. A copy of that order is attached as Exhibit A.

II

In an attempt to avoid any conflict with the exercise of this Court's authority, respondents requested the said District Court in an emergency hearing to stay the execution of its order requiring the lands to be deeded to Aerojet-General Corporation. On June 20, 1972, however, this request was denied and the said District Court appointed the Clerk of the United States District Court for the Southern District of Florida as commissioner to execute a deed with like effect as if done by respondents. A copy of that order is attached as Exhibit B. Pursuant to that order, a fee simple deed was executed and delivered by the appointed commisioner to Aerojet-General Corporation on June 21, 1972.

III

As respondents were compelled by action of Aerojet-General Corporation to divest themselves of the lands involved herein, Aerojet-General Corporation is liable for respondents' inability to offer such land to Dade County and has taken such land charged with the preemptory right of Dade County conferred by §253.111, Florida Statutes.

WHEREFORE, respondents pray the Court to absolve them from any duty to convey the lands involved to petitioner, to determine that Aerojet-General Corporation is responsible to petitioner in their stead, and to otherwise adjudicate the rights and liabilities of the parties as affected by §253.111, Florida Statutes.

ROBERT L. SHEVIN
Attorney General

BARRY S. RICHARD
Deputy Attorney General
Department of Legal Affairs
The Capitol
Tallahassee, Florida 32304

/s/ M. Stephen Turner

M. STEPHEN TURNER
General Counsel
Board of Trustees
Elliot Building
Tallahassee, Florida 32304

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Return of Respondents have been furnished by mail to Mr. Stuart L. Simon, County Attorney, Dade County Courthouse, Miami, Florida, and to George W. Wright, Jr., Esquire, of Mershon, Sawyer, Johnston, Dunwody & Cole, 1600 First National Bank Building, 100 Biscayne Boulevard South, Miami, Florida 33131, attorney for Aerojet-General Corporation, this 22nd day of June, 1972.

/s/ M. Stephen Turner

M. STEPHEN TURNER

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IN THE SUPREME COURT OF
THE STATE OF FLORIDA

Case No. 42,461

STATE OF FLORIDA ex rel METROPOLITAN DADE COUNTY, a political instrumentality of the State of Florida,

Petitioner,

vs.

REUBIN O'D. ASKEW, et al., comprising the Board of Trustees of the Internal Improvement Trust Fund,

Respondents,

vs.

AEROJET-GENERAL CORPORATION, a foreign corporation,

Third Party Respondents.

[Received June 23, 1972]

THIRD PARTY COMPLAINT

1. Complainants, as Respondents in the above-styled case, constitute the Board of Trustees of the Internal Improvement Trust Fund created by Section 253.052, Florida Statutes.

2. Third Party Respondent is an Ohio corporation authorized to transact business in Florida.

3. On June 9, 1972, Complainants were served with a Petition for Writ of Mandamus filed by Metropolitan Dade County as Petitioner in the above-styled case. Petitioner sought to be afforded the right to acquire the following described lands in Dade County for public purposes pursuant to F.S. §253.111 before Complainants conveyed these lands to Third Party Respondent:

> Sections 1 through 14, Township 57 South, Range 37 East; Sections 17 through 20, Township 56 South, Range 37 East; Sections 24 through 36, Township 56 South, Range 37 East; W ½ of Section 5, Township 59 South, Range 38 East; Section 6, Township 59 South, Range 38 East.

4. On June 12, 1972, the Supreme Court of Florida issued an Alternative Writ of Mandamus requiring Complainants to afford Metropolitan Dade County the right to acquire the aforementioned lands or show cause why a peremptory writ of mandamus commanding same should not be issued.

5. Complainants and Third Party Respondent were parties to a certain action styled Aerojet-General Corp v. Askew, et al., reported at 453 F.2d 813, in which the Fifth Circuit Court of Appeals affirmed a lower court judgment determining that Aerojet-General Corporation was entitled to specific performance of the exercise of a certain option agreement covering the aforementioned lands. Pursuant to the mandate of the Fifth Circuit Court of Appeals, the District Court for the Northern District of Florida issued an order compelling specific performance, and on June 21, 1972, the aforementioned lands were deeded by a court-appointed commissioner to Third Party Respondent.

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6. By virtue of the federal court suit instituted by Third Party Respondent and the order compelling specific performance obtained by it, Complainants were unable to afford Metropolitan Dade County the opportunity to receive the aforementioned lands as required by Section 253.111, Florida Statutes, and Third Party Respondent is accountable for any unauthorized action of Complainants in that respect.

7. At the time of its exercise of the option to purchase from Complainants, Third Party Respondent knew that F.S. §253.111 had conferred a prior right in favor of Metropolitan Dade County and knew Complainants had no authority to honor the exercise of such option unless Metropolitan Dade County refused to exercise its right to receive the aforementioned lands.

8. Nevertheless, Third Party Respondent elected to proceed with a suit for specific performance in federal court against Complainants rather than claiming damages for breach of contract by the State and without joining Metropolitan Dade County to adjudicate its right to the aforementioned lands. Hence, Third Party Respondent holds said lands subject to the interest of Metropolitan Dade County and is answerable for such interest.

WHEREFORE, Complainants pray this Court to declare Third Party Respondent responsible to Metropolitan Dade County for the interest in the aforementioned lands conferred by §253.111, Florida Statutes, and obligated to take same action under said statute as Complainants would have had to take if not required to deed said lands to Third Party Respondent.

ROBERT L SHEVIN
Attorney General

BARRY S. RICHARD
Deputy Attorney General
Department of Legal Affairs
The Capitol
Tallahassee, Florida 32304

/s/ M. Stephen Turner

M. STEPHEN TURNER
General Counsel
Board of Trustees
Elliot Building
Tallahassee, Florida 32304

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Third Party Complaint has been furnished by mail to Mr. Stuart L. Simon, County Attorney, Dade County Courthouse, Miami, Florida, and George W. Wright, Jr., Esquire, of Mershon, Sawyer, Johnston, Dunwody & Cole, 1600 First National Bank Building, 100 Biscayne Boulevard South, Miami, Florida 33131, attorney for Aerojet-General Corporation, this 22nd day of June, 1972.

/s/ M. Stephen Turner

M. STEPHEN TURNER

BLEED THROUGH POOR COPY

IN THE SUPREME COURT OF
THE STATE OF FLORIDA

STATE OF FLORIDA ex rel METROPOLITAN DADE COUNTY, a political instrumentality of the State of Florida,

Petitioner,

vs.

REUBIN O'D. ASKEW, et al., comprising the Board of Trustees of the Internal Improvement Trust Fund,

Respondents,

vs.

AEROJET-GENERAL CORPORATION, a foreign corporation,

Third Party Respondents.

REQUEST FOR AMENDMENT TO ALTERNATIVE WRIT OF MANDAMUS AND MOTION TO EXTEND ALTERNATIVE WRIT OF MANDAMUS TO THIRD PARTY RESPONDENT

Petitioner, State of Florida ex rel, Metropolitan Dade County, a political subdivision of the State of Florida, by and through its undersigned attorney, respectfully moves this Honorable Court to extend its Alternative Writ of Mandamus to Aerojet-General Corporation, a foreign corporation, third party respondents, and says:

1. On June 12, 1972, this Court issued its Alternative Writ of Mandamus to Reubin O'D. Askew, et al., comprising the Board of Trustees of the Internal Improvement Trust Fund, Respondents.

2. On June 22, 1972, Respondent filed its return and alleged that Aerojet-General Corporation is liable and responsible for Respondents' inability to offer the lands in issue to Petitioner Dade County.

3. By virtue of a fee simple deed issued by the Clerk of the United States District Court for the Southern District of Florida, Aerojet-General Corporation now holds claim to title to said lands.

4. On June 22, 1972, Aerojet-General Corporation was designated by the original Respondent as a third party Respondent in the pending cause and was alleged to be responsible to the Petitioner for the Petitioner's interest in the aforementioned lands. Aerojet-General Corporation is therefore obliged to take the same course of action under the law as the Respondents, Askew, et al., were directed to take by this Court's Alternative Writ of Mandamus.

5. Aerojet-General Corporation is a necessary and indispensable party to this mandamus proceeding without which full and complete relief may not be granted.

6. This request for Amendment and Motion to Extend the Alternative Writ of Mandamus to Aerojet-General Corporation is proper pursuant to Rule 1.660(c) Florida Rules of Civil Procedure.

WHEREFORE, Petitioner prays that the Alternative Writ of Mandamus previously issued be extended to include the Aerojet-General Corporation in order that all necessary and indispensable parties be a subject to this Court's jurisdiction.

Respectfully submitted,

STUART SIMON
Dade County Attorney
1626 Dade County Courthouse
Miami, Florida 33130

By: /s/ Alan T. Dimond
Alan T. Dimond
Assistant County Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Request for Amendment to Alternative Writ of Mandamus and Motion to Extend Alternative Writ of Mandamus to Third Party Respondent was mailed this 23rd day of June, 1972, to:

George W. Wright, Jr., Esquire
Mershon, Sawyer, Johnston, Dunwody & Cole
1600 First National Bank Building
100 Biscayne Boulevard South
Miami, Florida 33131

Robert L. Shevin, Attorney General and
Barry S. Richard, Deputy Attorney General
Department of Legal Affairs
The Capitol
Tallahassee, Florida 32304

M. Stephen Turner, Esquire
General Counsel
Board of Trustees
Elliot Building
Tallahassee, Florida 32304

/s/ Alan T. Dimond
Assistant County Attorney

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

No. TCA 1831

AEROJET-GENERAL CORP.,
an Ohio corporation,

Plaintiff,

vs.

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, RICHARD B. STONE, Secretary of the State of Florida, ROBERT SHEVIN, Attorney General of the State of Florida, FRED O. DICKINSON, JR., Comptroller of the State of Florida, THOMAS D. O'MALLEY, Treasurer of the State of Florida, FLOYD T. CHRISTIAN, Commissioner of Education of the State of Florida, and DOYLE CONNER, Commissioner of Agriculture of the State of Florida, as and constituting members of the Board of Trustees of the Internal Improvement Fund of the State of Florida; STEPHEN P. CLARK, Mayor of Metropolitan Dade County, and S. A. DANSYEAR, JOYCE GOLDBERG, HARVEY I. REISMAN, EDWARD T. GRAHAM, EDWARD C. FOGG, III, JAMES F. McKILLIPS and HARRY P. CAIN, Commissioners of Metropolitan Dade County, as and constituting the Board of County Commissioners of Metropolitan Dade County, Florida; METROPOLITAN DADE COUNTY, FLORIDA; and STUART SIMON, County Attorney of Metropolitan Dade County, as County Attorney of Metropolitan Dade County, Florida,

Defendants.

AMENDED COMPLAINT FOR DECLARATORY DECREE AND INJUNCTIVE RELIEF

Petitioner sues Defendant and says:

1. The Plaintiff is a corporation duly incorporated, organized and existing under the laws of Ohio, with its principal place of business in a state other than the State of Florida.

2. REUBIN O'DONOVAN ASKEW is Governor of the State of Florida. RICHARD B. STONE is Secretary of the State of Florida. ROBERT SHEVIN is Attorney General of the State of Florida. FRED O. DICKINSON, JR. is Comptroller of the State of Florida. THOMAS D. O'MALLEY is Treasurer of the State of Florida. FLOYD T. CHRISTIAN is Commissioner of Education of the State of Florida. DOYLE CONNER is Commissioner of Agriculture of the State of Florida. In their respective official capacities, said Defendants are members of and constitute the Board of Trustees of the Internal Improvement Fund of the State of Florida. (Hereafter, "Trustees".) Said Defendants are citizens of the State of Florida.

3. STEPHEN P. CLARK is Mayor of Metropolitan Dade County, Florida. S. A. DANSYEAR, JOYCE GOLDBERG, HARVEY I. REISMAN, EDWARD T. STEPHENSON, EDWARD T. GRAHAM, EDWARD C. FOGG, III, JAMES F. McKILLIPS and HARRY P. CAIN are Commissioners of Metropolitan Dade County, Florida. The Defendants named in this paragraph are and constitute the Board of County Commissioners of Metropolitan Dade County, Florida. (Hereafter, "Commissioners") Said Defendants are citizens of the State of Florida.

4. METROPOLITAN DADE COUNTY (hereafter, "Dade County" or "County") is a political subdivision of the State of Florida, having, under the provisions of the Florida Constitution, the powers of local self government.

5. STUART SIMON is County Attorney of Metropolitan Dade County, Florida. Said Defendant is a citizen of the State of Florida. (Hereafter, "County Attorney".)

6. The matter in controversy herein exceeds the sum of Ten Thousand Dollars ($10,000.00), exclusive of interest and costs. This action arises under the Constitution of the United States, to enforce Plaintiff's Constitutional rights, as hereinafter more fully appears. This Court has jurisdiction of the cause pursuant to Title 28 U.S.C. §§1131, 1132.

7. On or about the 21st day of December, 1961, Plaintiff and the Trustees entered into a written Lease With Option To Purchase, a true and correct copy of which is attached hereto and by reference made a part hereof as Exhibit A. A memorandum of said Lease With Option To Purchase was recorded in the Public Records of Dade County, Florida, on December 17, 1962, in Official Records Book 3450, at page 470. Said Lease-Option was also entered into by the STATE OF FLORIDA, BOARD OF EDUCATION (hereafter "Board of Education"), the membership of which Board is identical to the membership of the Defendant Board of Trustees.

8. Pursuant to the Lease-Option contract, Plaintiff did exercise its option to purchase the lands described in the contract, by serving upon the Trustees and the Board of Education written notice of the exercise of said option

to purchase on September 8, 1969. Thereafter, the Trustees and Board of Education refused to perform their contract by declining to convey the property described in the Lease-Option to Plaintiff in return for payment of the specified purchase price. Thereupon, Plaintiff herein filed suit in this Court for specific performance of the contract (Case TCA-1534), and on September 21, 1970, this Court entered Final Judgment of Specific Performance for Plaintiff (318 F.Supp. 55), which judgment was affirmed by the United States Court of Appeals, Fifth Circuit (hereafter "Court of Appeals"), on December 9, 1971 (453 F.2d 819) and its mandate issued on March 9, 1972. That case presently pends before the United States Supreme Court on petition for writ of certiorari, as case number 71-1505, although applications by the Trustees and Board of Education for a stay of enforcement of this Court's Final Judgment by specific performance and the mandate of the Court of Appeals were made both to the Court of Appeals and the United States Supreme Court and denied. On or about June 20, 1972, pursuant to order of this Court, the property encompassed by the terms of the Lease-Option contract was deeded in fee simple to Plaintiff. Copy of said deed, which has been delivered to Plaintiff, is attached hereto as Exhibit B.

9. Subsequent to affirmance by the Court of Appeals of this Court's judgment of specific performance aforementioned, while the cause remained pending on petition for writ of certiorari before the Supreme Court of the United States, and even as this Court was entering its orders to enforce its specific performance judgment of September 21, 1970, Defendant DADE COUNTY filed a petition for writ of mandamus (hereafter "the mandamus proceedings") in the Florida Supreme Court, seeking mandamus relief

against the Defendant-TRUSTEES. Said Petition was filed by Defendant SIMON, purportedly pursuant to his authority to act as attorney for Defendant DADE COUNTY and Defendant COMMISSIONERS. True copy of said petition and memorandum in support thereof are attached hereto as Exhibit C. Plaintiff is not a party to said mandamus proceeding .The Defendants who are parties to said mandamus proceedings are now engaged in what amounts to a friendly suit that attempts and would purport to invoke the application of a Florida Statute §253.111 to Plaintiff's contract (Exhibit A), that if so applied would unconstitutionally impair contractual rights held by Plaintiff and also attempts and purports to put in issue the question of impairment of Plaintiff's said contractual rights by the issuance of a peremptory writ of mandamus, compelling the TRUSTEES to offer most of the aforesaid lands covered by Plaintiff's contract for sale to Dade County. Said Florida Statute was enacted long subsequent to the execution of the Lease-Option contract attached hereto as Exhibit A, and, therefore, has no application thereto, but, if so applied, as sought by Defendants in the mandamus proceedings, would impair the obligation of contract in the manner prohibited by Article 1, Section 10 of the United States Constitution.

10. The Supreme Court of Florida, upon the COUNTY's petition and TRUSTEES' consent thereto, (true copy of which is attached hereto as Exhibit D), has issued its alternative writ of mandamus (true copy of which is attached hereto as Exhibit E) compelling the Defendant TRUSTEES to offer for sale to the COUNTY most of the property lease-optioned to Plaintiff by the contract attached as Exhibit A, or to show cause by written return and brief on or before July 5, 1972, why a peremptory writ of man-

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damus so compelling the TRUSTEES should not issue. Said issuance of an alternative writ of mandamus is a ruling by the Supreme Court of Florida that prima facie, §253.111, Fla. Stats. applies to the contract attached hereto as Exhibit A. (Rule 4.5b(3), Florida Appellate Rules.) By virtue of the execution and delivery to Plaintiff of the aforementioned fee simple deed to the lands involved, the mandamus proceedings have become and are now moot, and present only academic and theoretical questions. The Defendant TRUSTEES no longer have title to the property involved, and therefore could not comply with an alternative or peremptory writ of mandamus conditioned as aforesaid. This is evidenced by the return filed by Defendant TRUSTEES, copy of which is attached as Exhibit F. No further proceedings in the Florida Supreme Court could validly affect or divest the rights of Plaintiff acquired by fee simple deed to the subject property, and Plaintiff has no duty of any sort to the Defendant DADE COUNTY with respect to the subject lands.

11. Defendants, jointly or severally, seek under color of law, to enforce a state statute which Plaintiff seeks to prevent on the ground that the statute is unconstitutional if applied as aforesaid, and if so applied and enforced against Plaintiff, would work irreparable injury for which injunctive relief as hereafter prayed for is necessary in aid of this Court's jurisdiction herein and to protect and effectuate its prior judgments and orders.

12. As to this Plaintiff, all issues of the applicability to its contract of §253.111, Fla. Stats., are res judicata as between Plaintiff and Defendant TRUSTEES, and the judgment of specific performance heretofore entered by this Court precludes the COUNTY from securing from the

TRUSTEES title to the lands described in Exhibit A. All issues of the applicability of Section 253.111, Fla. Stats. to the contract attached as Exhibit A, have been waived by Defendants, jointly and severally, and Defendants, jointly and severally, are legally and equitably estopped to now assert any rights if any there may be, against Plaintiff either in the pending mandamus proceedings, in these proceedings, or by any separate action. The conduct of the Defendants, jointly and severally, since the enactment of §253.111, Fla. Stats. amounts in fact, law and equity to a waiver of any rights which may otherwise be accrued to Defendants, jointly and severally, by virtue of the enactment of said §253.111, Fla. Stats. Accordingly, Defendants, jointly and severally, are forever estopped from making any claim against Plaintiff upon any theory which is based on the enactment of §253.111, Fla. Stats.

13. There is a genuine and bona fide dispute between Plaintiff and Defendants as to the issues of law hereinabove raised and alleged.

14. Plaintiff is without adequate remedy at law.

WHEREFORE, Plaintiff prays the Court will take jurisdiction of the cause and the parties, and:

a. Declare and adjudge that Florida Statute §253.111 does not apply to the contract attached hereto as Exhibit A, or is unconstitutional as violative of Art. 1, §10 U.S. Constitution, to the extent it may be applicable to such contract so as to deny to Plaintiff its contractual rights to acquire or retain title to the lands described in said contract.

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b. Preliminarily enjoin Defendants, jointly and severally, from proceeding in any way with the mandamus proceedings referred to above which is presently pending in the Supreme Court of Florida, and from the enforcement of any writ, judgment or order entered therein.

c. Preliminarily enjoining Defendants, jointly and severally, from instituting or prosecuting any other suit or action the object or purpose of which is to deny to Plaintiff the right to receive or retain title to the lands described in the contract attached as Exhibit A.

d. That, upon final hearing, the preliminary injunctions sought in paragraphs b and c above be made permanent.

e. Grant unto Plaintiff such other and further relief as the Court deems proper.

f. Grant unto Plaintiff its costs herein.

MERSHON, SAWYER,
JOHNSTON, DUNWODY
& COLE
Attorneys for Plaintiff

Aerojet-General Corporation
1600 First National Bank Building
Miami, Florida 33131

By /s/ George W. Wright, Jr.

George W. Wright, Jr.

By /s/ Karl B. Block, Jr.

Karl B. Block, Jr.

EXHIBIT B

[Filed June 20, 1972]

OFFICE OF CLERK U.S. DISTRICT COURT
NORTH. DIST. FLA.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

AEROJET-GENERAL CORPORATION,
An Ohio Corporation,
Plaintiff,

v.

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, RICHARD B. STONE, Secretary of the State of Florida, ROBERT SHEVIN, Attorney General of the State of Florida, FRED O. DICKINSON, JR., Comptroller of the State of Florida, THOMAS D. O'MALLEY, Treasurer of the State of Florida, FLOYD T. CHRISTIAN, Commissioner of Education of the State of Florida, and DOYLE CONNOR, Commissioner of Agriculture of the State of Florida, as and constituting members of the Board of Trustees of the Internal Improvement Fund of the State of Florida, and as and constituting members of the State Board of Education of the State of Florida,
Defendants.

ORDER APPOINTING COMMISSIONER FOR EXECUTION OF DEED

Upon representation to the Court and it affirmatively appearing that notwithstanding this Court's orders commanding defendants to convey to plaintiff certain real property described in this Court's final order, lying and being situate in Dade County, Florida, defendants have failed and refused to comply with this Court's orders. Pursuant to Rule 70, Federal Rules of Civil Procedure, the Court has authority to appoint a person to execute a conveyance of land or to deliver deeds in order to effect judgment compelling specific acts. The defendants have failed and refused to perform the specific acts required by this Court's judgment, as affirmed by the United States Court of Appeals for the Fifth Circuit. Therefore, it is

CONSIDERED, ORDERED and ADJUDGED as follows:

[1] The Honorable Joseph I. Bogart, Clerk of the United States District Court for the Southern District of Florida be and he is hereby appointed as this Court's Commissioner to perform the acts specified hereafter. The said Joseph I. Bogart is a resident of Miami, Dade County, Florida, within the Southern District of Florida, the district within which the property in question lies.

[2] The said Joseph I. Bogart be and he is hereby directed forthwith to execute the deed attached hereto in the name of and on behalf of the State of Florida Trustees of the Internal Improvement Trust Fund and the State of Florida Board of Education. Said deed, when so made, executed and delivered by said Joseph I. Bogart, as such

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commissioner, shall vest in plaintiff all the right, title, claim and interest of, in, and to the premises described therein to the same extent and with like effect as if done by the defendants.

[3] After execution of deed as hereinbefore ordered, the said Joseph I. Bogart shall deliver said executed deed to Aerojet-General Corporation, or its attorneys of record herein (Messrs. Mershon, Sawyer, Johnston, Dunwody & Cole, 1600 First National Bank Building, Miami, Florida), upon tender to the said Joseph I. Bogart of a cashiers check of a national bank located in the State of Florida, payable jointly to defendants in the sum of $1,246,308.88.

[4] Upon receipt of said check, the said Joseph I. Bogart shall cause same to be delivered to the Attorney General of the State of Florida, whereafter distribution of proceeds shall be made among defendants.

[5] The said Joseph I. Bogart shall, after complying with the terms of this order, report to the Court his costs in connection with compliance herein, which pursuant to Rule 70, Federal Rules of Civil Procedure, shall be taxed against defendants by further order.

DONE and ORDERED in Chambers in Tallahassee, Florida, this 20th day of June, 1972.

/s/ David L. Middlebrooks

DAVID L. MIDDLEBROOKS
United States District Judge

Certified to be a true and correct copy of the original. U.S. District Court Joseph I. Bogart, Clerk Southern Dist. of Fla.

/s/ Joseph I. Bogart
By_____
Clerk

Date: 6/20/72

CERTIFIED A TRUE COPY
MARVIN S. WAITS, CLERK

/s/ Helen A. Roberts
By_____
Deputy Clerk

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FEE SIMPLE DEED BY COMMISSIONER

THIS INDENTURE, made this 20th day of June, A.D. 1972, between the STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND and the STATE OF FLORIDA BOARD OF EDUCATION, parties of the first part, by JOSEPH I. BOGART, Clerk of the United States District Court for the Southern District of Florida, as COMMISSIONER appointed by the Honorable David L. Middlebrooks, United States District Judge of the United States District Court, Northern District of Florida, by order entered in a case therein pending styled "AEROJET-GENERAL CORPORATION, Plaintiff, vs. REUBIN O'DONOVAN ASKEW, et al., Defendants" (TCA 1534), a certified copy of which order is attached hereto, and AEROJET-GENERAL CORPORATION, a corporation organized and existing under the laws of the State of Ohio, with principal place of business in Azusa, Los Angeles County, California, party of the second part.

WITNESSETH: that the said parties of the first part, for and in consideration of the sum of One Million, Two Hundred Forty-Six Thousand, Three Hundred Eight and 88/100ths Dollars ($1,246,308.88) (representing the net amount due parties of the first part on a purchase price of One Million, Two Hundred Sixty-five Thousand, Six Hundred Fifty and no/100ths Dollars ($1,265,650.00) after credits against said purchase price authorized by the Honorable David L. Middlebrooks, United States District Judge), to said Commissioner in hand paid, receipt whereof is hereby acknowledged, have granted, bargained, sold and transferred, and by these presents do grant, bargain, sell and transfer unto the said party of the second part and its successors and assigns, forever, all that certain

parcel of land lying and being in the County of Dade and State of Florida, more particularly described as follows:

> All of Sections 1 through 36 inclusive, Township 56 South, Range 37 East; all of Section 16, Township 57 South, Range 37 East; W ½ of Section 5, and all of Sections 6 and 16, Township 59 South, Range 38 East, containing 25,313 acres, more or less, and lying and being in the County of Dade in the State of Florida;

TOGETHER with all the tenements, hereditaments and appurtenances, with every privilege, right, title, interest and estate, dower and right of dower, reversion, remainder and easement thereto belonging or in anywise appertaining;

TO HAVE AND TO HOLD the above granted and described premises in fee simple forever.

SAVING AND RESERVING unto the said STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND and its successors, an undivided three-fourths interest in, and title in and to, an undivided three-fourths interest in all the petroleum that is or may be in, on, or under said land with the privilege to mine and develop the same.

IN WITNESS WHEREOF, the undersigned JOSEPH I. BOGART, as Commissioner, has executed this deed in the City of Miami, Florida, on this 20th day of June, 1972, in the name of and on behalf of the STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND, and the STATE OF FLORIDA BOARD OF EDUCATION, and has affixed the Seal of the United States District Court for the Southern District of Florida, pursuant to the Court order attached hereto.

BLEED THROUGH POOR COPY

(SEAL)
STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

(SEAL)
STATE OF FLORIDA BOARD OF EDUCATION

STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND; and STATE OF FLORIDA BOARD OF EDUCATION; and REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, RICHARD (DICK) STONE, Secretary of State of the State of Florida, ROBERT SHEVIN, Attorney General of the State of Florida, FRED O. DICKINSON, Comptroller of the State of Florida, THOMAS D. O'MALLEY, Treasurer of the State of Florida, FLOYD T. CHRISTIAN, Commissioner of Education of the State of Florida, and DOYLE CONNER, Commissioner of Agriculture of the State of Florida, As and constituting the State of Florida Board of Trustees of the Internal Improvement Trust Fund and as and constituting the State of Florida Board of Education

Signed, Sealed and Delivered in the presence of:

s/ George W. Wright, Jr.

/s/ Karl B. Block, Jr.

(SEAL)

By: /s/ Joseph I. Bogart

JOSEPH I. BOGART,
as Commissioner

STATE OF FLORIDA
COUNTY OF DADE

BEFORE ME, the undersigned authority, personally appeared JOSEPH I. BOGART, to me well known and known to me to be the individual described in and who executed the foregoing deed, and acknowledged before me that he is Clerk of the United States District Court for the Southern District of Florida and is the Commissioner appointed to execute the foregoing deed, and acknowledged the execution of said deed as such Commissioner for and on behalf of the State of Florida Board of Trustees of the Internal Improvement Trust Fund and the State of Florida Board of Education, as the act and deed of said State Boards, for the uses and purposes therein expressed, pursuant to authority conferred upon him by the Court order attached hereto, and that the Seal affixed hereto is the Seal of the United States District Court for the Southern District of Florida, and was affixed thereunto by said Commissioner.

WITNESS my hand and official seal at Miami, said County and State, on this 20th day of June, A.D. 1972.

/s/ Woodrow M. Melvin, Jr.

Notary Public, State of Florida at Large. My Commission Expires May 25, 1975. Bonded thru Maynard Bonding Agency.

Certified to be a true and correct copy of the original.

U.S. District Court
Joseph I. Bogart, Clerk
Southern Dist. of Fla.

By: /s/ Joseph I. Bogart

Clerk

Date: 6/20/72

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[Filed June 16, 1972]

OFFICE OF CLERK U.S. DISTRICT COURT
NORTH. DIST. FLA.
TALLAHASSEE CIVIL ACTION

NO. 1534

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

AEROJET-GENERAL CORPORATION,
An Ohio Corporation,

Plaintiff,

v.

REUBIN O' DONOVAN ASKEW, Governor of the State of Florida, RICHARD B. STONE, Secretary of the State of Florida, ROBERT SHEVIN, Attorney General of the State of Florida, FRED O. DICKINSON, JR., Comptroller of the State of Florida, THOMAS D. O'MALLEY, Treasurer of the State of Florida, FLOYD T. CHRISTIAN, Commissioner of Education of the State of Florida, and DOYLE CONNOR, Commissioner of Agriculture of the State of Florida, as and constituting members of the Board of Trustees of the Internal Improvement Fund of the the State of Florida, and as an constituting members of the State Board of Education of the State of Florida,

Defendants.

ORDER

On September 21, 1970, this Court entered summary judgment in favor of plaintiff and directed that defendants execute and comply with the contract of sale entered into between the parties on or about December 21, 1961. An appeal to the United States Court of Appeals for the Fifth Circuit ensued and the judgment of this Court was affirmed. Aeroject-General Corp. v. Askew et al, 453 F.2d 819 (5th Cir. 1971). On June 5, 1972, upon motion of plaintiff, this Court ordered specific performance herein to occur on or before June 21, 1972, conditioned upon denial of the United States Supreme Court of a stay of these proceedings. The application for writ of stay was denied by Mr. Justice Powell on or about May 20, 1972. As of the date of this order it appears that no closing date for the above ordered transaction has yet been agreed to by the parties and that the parties have not agreed as to the form of fee simple deed to be executed and delivered by defendants to plaintiff.

This Court was advised on June 14, 1972, that the State of Florida, upon the relation or complaint of metropolitan Dade County, a political subdivision of the State of Florida, had petitioned the Supreme Court of Florida on June 9, 1972, for issuance of writ of mandamus directed to these defendants, except the State of Florida Board of Education, requiring them to afford Dade County the right to acquire the same lands directed by judgment and order of this Court to be conveyed by defendants to Aerojet-General Corporation. On the same date, the respondents in that cause, the defendants herein except as above noted, filed a waiver of notice of hearing and consent to issuance

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of alternative writ of mandamus. Thereupon, on June 12, 1972, there was caused to be issued by the Clerk of the Supreme Court of Florida, an alternative writ of mandamus requiring respondents to afford Dade County the right to acquire those lands ordered by this Court to be conveyed to plaintiff herein, or to show cause why, on or before July 5, 1972, a peremptory writ of mandamus should not issue commanding same to be done. As of this date insofar as this Court is advised respondents herein have taken no affirmative action in response to or otherwise given response to the writ as issued.

To avoid further protraction of the enforcement procedures heretofore ordered, it is therefore

ORDERED:

[1] Defendants collectively and each of them in their representative capacities, their agents, successors, deputies and employees, and all persons acting by, through or under them or by or through their order, be and they are expressly enjoined from conveying those lands, directed to be conveyed by them to Aerojet-General Corporation by Judgment and order of this Court, to any other person or persons, sovereign or sovereign entity, or political subdivision or agency of the State of Florida, excepting the plaintiff Aerojet-General Corporation.

[2] In conformity with previous orders and judgment of this Court plaintiff may tender the net sum due defendants in the form of cashier's check of a national bank in the State of Florida, payable jointly to the State of Florida Board of Trustees of the Internal Improvement Trust Fund and the State of Florida Board of Education.

[3] Closing shall take place at the executive offices of the Board of Trustees of the Internal Improvement Trust Fund, Tallahassee, Florida, on June 21, 1972, at 10:00 A.M.

[4] The form of deed attached hereto together with proper acknowledgment is the form of deed to be executed forthwith by defendants and to be delivered by them to plaintiff simultaneously upon payment by plaintiff of the purchase sum of one million two hunderd sixty five thousand six hundred fifty and no/100ths dollars ($1,265,-650.00) less rental prorations of seventeen thousand six hundred eighty four dollars and forty two cents ($17,684-.42) and less appellate costs of one thousand six hundred fifty six dollars and seventy cents ($1,656.70) or the net sum of one million two hundred forty six thousand three hundred eight dollars and eighty eight cents ($1,246,-308.88).

[5] Failing this the Court will, pursuant to Rule 70, Federal Rules of Civil Procedure, direct the acts of execution and delivery of the deed be done as and by the acts of defendants, each of them and collectively, with costs to be borne by them; with the acts, when so done to have like effect as if done by the disobedient parties. In this eventuality the Court will designate the Honorable Joseph I. Bogart, Clerk, United States District Court for the Southern District of Florida to act in the stead of defendants in the execution of and delivery of deed from defendants to plaintiff,

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DONE and ORDERED in Chambers in Tallahassee, Florida, this 16th day of June, 1972.

/s/ David L. Middlebrooks

DAVID L. MIDDLEBROOKS
United States District Judge

Certified to be a true and correct copy of the original, U.S. District Court Joseph I. Bogart, Clerk Southern Dist. of Fla.

/s/ Joseph I. Bogart

By_____
Clerk

Date: 6/20/72

Certified a True Copy
Marvin S. Waits, Clerk

By Helen A. Roberts

Deputy Clerk

FEE SIMPLE DEED

DEED NO._____

THIS INDENTURE, made this _____ day of _____, A.D. 1972, between the STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND and the STATE OF FLORIDA BOARD OF EDUCATION, parties of the first part, and AEROJET-GENERAL CORPORATION, a corporation organized and existing under the laws of the State of Ohio, with principal place of business in Azusa, Los Angeles County, California, party of the second part,

WITNESSETH, that the said parties of the first part, for and in consideration of the sum of One Million, two Hundred Sixty-five Thousand, Six Hundred Fifty and no/100ths Dollars ($1,265,650.00) to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and transferred, and by these presents do grant, bargain, sell and transfer unto the said party of the second part and its successors and assigns, forever, all that certain parcel of land lying and being in the County of Dade and State of Florida, more particularly described as follows:

All of Sections 1 through 36, inclusive, Township 56 South, Range 37 East; all of Section 16, Township 57 South, Range 37 East; W ½ of Section 5, and all of Sections 6 and 16, Township 59 South, Range 38 East, containing 25,313 acres, more or less, and lying and being in the County of Dade in said State of Florida;

BLEED THROUGH POOR COPY

TOGETHER with all the tenements, hereditaments and appurtenances, with every privilege, right, title, interest and estate, dower and right of dower, reversion, remainder and easement thereto belonging or in anywise appertaining;

TO HAVE AND TO HOLD the above granted and described premises in fee simple forever.

DEED NO._____

SAVING AND RESERVING unto the said STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND and its successors, an undivided three-fourths interest in, and title in and to, an undivided three-fourths interest in all the phosphate, minerals and metals that are or may be in, on, or under said land and an undivided one-half interest in all the petroleum that is or may be in, on, or under said land with the privilege to mine and develop the same.

IN TESTIMONY WHEREOF, the members of the STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND and the STATE OF FLORIDA BOARD OF EDUCATION have hereunto subscribed their names and have caused their official seals to be hereunto affixed, in the City of Tallahassee, Florida, on this the ____ day of _____, A.D. 1972.

(SEAL)
STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

(SEAL)
STATE OF FLORIDA BOARD OF EDUCATION

Governor

Secretary of State

Attorney General

Comptroller

Treasurer

Commissioner of Education

Commissioner of Agriculture

As and constituting the State of Florida Board of Trustees of the Internal Improvement Trust Fund and as and constituting the State of Florida Board of Education

Certified to be a true and correct copy of the original.
U.S. District Court
Jospeh I. Bogart, Clerk
Southern Dist. of Fla.

By /s/ Joseph I. Bogart

Clerk

Date: 6/20/72

CERTIFIED A TRUE COPY
MARVIN S. WAITS, Clerk

By /s/ F. F. Taylor

Deputy Clerk

BLEED THROUGH POOR COPY

[Received June 30, 1972]

County Attorney

IN THE SUPREME COURT OF
THE STATE OF FLORIDA

Case No. 42,461

STATE OF FLORIDA ex rel METROPOLITAN DADE COUNTY, a political instrumentality of the State of Florida,

Petitioner,

vs.

REUBIN O'DONOVAN ASKEW, et al., comprising the Board of Trustees of the Internal Improvement Trust Fund,

Respondents.

MOTION FOR LEAVE TO FILE MEMORANDUM OF LAW AS AMICUS CURIAE

This motion, and the attached Memorandum of Law are filed with the Clerk of this Court only and expressly for the purposes hereafter stated. In the event this Motion For Leave To File Memorandum Of Law as Amicus Curiae is not granted, then this motion and attached memorandum are withdrawn by movant, and movant will continue to have no present interest in these proceedings.

The undersigned attorneys represent AEROJET-GENERAL CORP. (hereafter, "Aerojet") solely and only in connection with respect to that certain case now pending

in the Supreme Court of the United States, Case No. 71-1505, on petition for certiorari, styled "Reubin O'Donovan Askew, et al., Petitioners v. Aerojet-General Corporation, Respondent"; and in that certain case now pending in the United States District Court, Northern District of Florida, Case No. TCA-1831, styled "Aerojet-General Corp. v. Reubin O'Donovan Askew, et al." The undersigned attorneys are not authorized by Aerojet to make any appearance in the above-styled proceedings, but only to seek leave of this Court to file an Amicus Curiae memorandum of law.

Aerojet is not a party to these proceedings. In light of the fact that relator's petition herein seeks to compel respondents herein to perform an alleged statutory, ministerial legal duty which relator claims of respondents, it is clear that Aerojet never could be a proper, necessary or indispensable party to these proceedings. Nonetheless, relator and respondents herein are busily doing their best, under the guise of an adversary proceeding, to have this Court purportedly adjudicate herein Aerojet's rights to that cerain realty described in Exhibit A. Aerojet has heretofore been adjudged entitled to fee simple title to said lands, in the aforementioned action now pending in the Supreme Court of the United States between Aerojet and respondents herein. Pursuant to judgment herein, and subject to the orders of the Supreme Court of the United States, Aerojet is fee simple owner of the realty described in Exhibit A.

Aerojet is informed, by professional courtesy of counsel for respondents herein, that there pends before this Court a request by respondents for issuance of a civil action summons directing Aerojet to respond to a "Third Party Complaint" purportedly filed against Aerojet by

BLEED THROUGH POOR COPY

respondents. Aerojet is further informed, by professional courtesy of counsel for relator herein, that there pends before this Court a request for amendment of the consent alternative writ herein, to purportedly impose the duty on Aerojet to comply with or respond to said alternative writ.

In view of the fact that either request, if by some chance granted, would deprive Aerojet of its legal, equitable or constitution rights, this motion is made for leave to file as Amicus Curiae, the attached memorandum of law.

Respectfully submitted,

MERSHON, SAWYER,
JOHNSTON, DUNWODY
& COLE, as Amicus Curiae
1600 First National Bank Building
Miami, Florida 33131

By /s/ George W. Wright, Jr.

George W. Wright, Jr.

By /s/ Karl B. Block, Jr.

Karl B. Block, Jr.

WE HEREBY CERTIFY that a true and correct copy of the foregoing Motion For Leave To File Memorandum Of Law As Amicus Curiae was mailed this 29 day of June, 1972 to: M. STEPHEN TURNER, ESQ., General Counsel, Board of Trustees, Eliott Building, Tallahassee, Florida, BARRY S. RICHARD, ESQ., Deputy Attorney General, The Capitol, Tallahassee, Florida, STUART L. SIMON, ESQ., County Attorney, Dade

County Courthouse, Miami, Florida and MARVIN S. WAITS, Clerk U.S. District Court, Northern District of Florida, Tallahassee Division, Tallahassee, Florida (Case No. TCA-1831).

/s/ Karl B. Block, Jr.

Of Counsel

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1972

FRIDAY, JULY 7, 1972

CASE NO. 42,461

STATE OF FLORIDA EX REL.
METROPOLITAN DADE COUNTY, ETC.,
Petitioner,

vs.

REUBIN O'DONOVAN ASKEW, ET AL.,
Respondents.

[July 26, 1972]

The Motion for Leave to File Memorandum of Law as Amicus Curiae filed on behalf of Aerojet-General Corporation is granted.

A True Copy

TEST:
Sid J. White
Clerk Supreme Court.

By:_____

cc: Honorable George W. Wright, Jr.
Honorable M. Stephen Turner
Honorable Barry S. Richard
Honorable Stuart L. Simon

TABLE OF AUTHORITIES

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in the
Supreme Court
of the
United States

NO. 71-1505

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, et al., as and constituting the members of the BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT FUND and the BOARD OF EDUCATION of the State of Florida,

Petitioners,

vs.

AEROJET-GENERAL CORPORATION,

Respondent.

SUPPLEMENTAL BRIEF OF RESPONDENT IN OPPOSITION TO SUPPLEMENTAL BRIEF OF PETITIONERS

The parties to this proceeding will be referred to as they were in the Reply to Petition for Certiorari previously filed. References to the Petitioners' Supplemental Appendix to their Reply to the Brief of Respondent will be prefaced by the letters "SA". References to Respondent's Supplemental Appendix attached hereto will be prefaced by the

letters "RSA".[1] All emphasis herein is supplied unless otherwise indicated.

Petitioners have incorporated in their Reply to the Brief of Respondent a "Supplemental Brief"[2] purportedly filed under the authority of Rule 24(5) of the Rules of this Court.[3] By this device, Petitioners would mislead this Court into believing that a mandamus action just instituted by Metropolitan Dade County (hereinafter "the County") against the Trustees in the Florida Supreme Court has brought before the Florida Court for decision one of the precise questions of state law which the Petitioners say was erroneously decided in the present case by the United States Court of Appeals for the Fifth Circuit (hereinafter "Court of Appeals"). An examination of this lately filed mandamus action will demonstrate that it can have no bearing on this case. Petitioners' "Supplemental Brief" does not present any basis for granting certiorari, or for delaying disposition of this case.

The institution and conduct of the mandamus action, and the attempt to use the mandamus action in connection with this lawsuit, are the Petitioners' latest ploys to frustrate or sabotage the orderly progress of this lawsuit. After Petitioners' applications for stay in this case were denied by the Court of Appeals and Circuit Justice Powell,

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[1]The appendix references are different from those appearing in the Petition and Reply. The appendix references here are only to matter submitted in conjunction with Petitioners' supplemental brief.

[2]pp. 21-25 of Petitioners' Reply Brief.

[3]It provides:

"Any party may file a supplemental brief at any time while a petition for a writ of certiorari is pending calling attention to new cases or legislation or other intervening matter not available at the time of his last filing."

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Petitioners began casting around for new courts and new ways to avoid obeying the orders of this Court, the Court of Appeals and the District Court. The result was a mandamus action brought by the County against the Trustees[4] on the theory that the Trustees had a ministerial duty to offer certain of the lands to the County before conveying to Respondent. This contention is bottomed on a Florida Statute enacted in 1965, four years after the Lease-Option involved herein, the text of which is set out below.[5] The County has demanded to be offered this property under the statute, but the County has not alleged that it could meet the statutory purchase requirements. (RSA 1-6).

[4]The Board of Education was not joined in the mandamus action for reasons which will appear.

[5]§253.111, *Fla.Stats.* (1971), applies only to the Trustees, not to the Board of Education:

> 253.111 Notice to board of county commissioners before sale.—The board of trustees of the internal improvement trust fund of the state shall not sell or convey any land to which they hold title unless and until they shall afford an opportunity to the county in which such land is situated to receive such land for public purposes on the following terms and conditions:
>
> (1) If an application is filed with the board requesting that they sell certain land to which they hold title and the board shall decide to sell such land or if the board shall, without such application, decide to sell such land the board shall, before consideration of any private offers, notify the board of county commissioners of the county in which such land is situated that such land is available to such county. Such notification shall be given by registered mail, return receipt requested.
>
> (2) The board of county commissioners of the county in which such land is situated shall, within ninety days after receipt of such notification from the board, determine by resolution whether or not it proposes to devote such land to public parks, public beaches, public fishing piers, public boat ramps, public dockage facilities or other public outdoor recreational purposes, hereinafter referred to generally as public outdoor recreational purposes.

The Petition for Writ of Mandamus was filed on June 9, (RSA. 1-6) and on the same day the Trustees consented in writing to the issuance of an alternative writ of mandamus. (SA. 8). An alternative writ issued from the Florida Supreme Court commanding the Trustees to offer the lands to the County for sale or to show cause for

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(3) If the board of county commissioners shall determine that it proposes to devote such land in perpetuity to public outdoor recreational purposes it shall adopt a resolution specifying such determination and setting forth:

(a) The specific public outdoor recreational purpose or purposes to which it proposes to devote such land;

(b) A tentative plan of development for such land;

(c) A tentative time schedule of development, which tentative time schedule shall set a date of commencement of development not later than two years after the date of such resolution and a date of conclusion of development not later than four years after the date of such resolution.

A certified copy of such resolution shall be furnished to the board within such ninety day period by registered mail, return receipt requested.

(4) If the board of county commissioners determines that it does not propose to devote such land to public outdoor recreational purposes it shall notify the board of such determination by sending, immediately after adoption, a certified copy of the resolution so specifying to the board by registered mail, return receipt requested. If the board of county commissioners shall fail to act as provided in subsection (3) within the ninety day period, such failure shall constitute a determination that it does not propose to devote such land to public recreational purposes.

(5) If the board receives within the ninety day period the certified copy of the resolution provided in subsection (3), the board shall forthwith convey to the county such land upon such terms and conditions and at such price as the board shall determine (but in no case at a price higher than such property would be disposed of under any other provision of this chapter), but subject to a reverter to the board if such land shall not be devoted to the public outdoor recreational purpose or purposes specified in such resolution in substantial accordance with the plan of development and the time schedule for development set forth in such resolution, and shall not be devoted in perpetuity to some public purpose.

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not doing so by July 5, 1972. (SA. 2-7). The Trustees quickly went to the District Judge with this alternative writ to which they had consented, and pleaded for stay of the specific performance judgment herein. The District Judge denied the renewed request for stay, after the parties submitted legal memoranda and oral argument. (RSA. 7). Thereafter, the Trustees refused to comply with the judgment and the District Court appointed a commissioner to convey the lands, as authorized by Rule 70, *F.R.C.P.* (SA. 29-31). The lands held by the Trustees and by the Board of Education were conveyed to Respondent in fee simple on June 20, 1972. (SA. 33-36).

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(6)(a) If the board of county commissioners shall determine that it does not propose to devote the land to public outdoor recreational purposes the board may dispose of the property as otherwise provided in this chapter.

(b) It shall not be a violation of the reverter clause of any deed from the board to a county under this section if the county shall in fact use the property for a public outdoor recreational purpose other than that specified in the resolution provided in subsection (3) or not in substantial accordance with the plan of development and time schedule set forth in such resolution if the board shall by appropriate resolution approve such change or such failure to act in substantial accordance with the plan of development or time schedule.

(c) Nothing in this section shall restrict any right otherwise granted to the board by this chapter to convey land to which they hold title to the state or any department, office, authority, board, bureau, commission, institution, court, tribunal, agency or other instrumentality of or under the state. The word land as used in this act means all lands vested in the board of trustees of the internal improvement trust fund.

(7) If any riparian owner shall exist with respect to any land to be sold by the board, such riparian owner shall have a right to secure such land, which right shall be prior in interest to the right in the county created by this section, provided that such riparian owner shall be required to pay for such land upon such prices, terms and conditions as determined by the trustees. Such riparian owner may waive this prior right in which case this section shall apply.

History.—§1, ch. 65-324; §§27, 35, ch. 69-106.

Respondent was not a party to the mandamus proceeding brought by the county, and Respondent has not been added as a party to date.[6] In fact, due to the initiation and conduct of this "sweetheart" mandamus action between parties whose sole objective was not to litigate with each other but to impair Respondent's rights, Respondent deemed it necessary to institute action for declaratory adjudication of the County's position, and this was done. (SA. 20-27; RSA.).[7] Prayer has been made in Respondent's pending declaratory judgment action for such injunctive relief against the conduct of the mandamus or institution of other proceedings as is necessary and proper under 28 *U.S.C.* §2283. (SA. 27; RSA. 9-45).

Petitioners are misleading this Court when they say that the Florida Supreme Court has before it in the County's mandamus proceedings the issue of Trustees' power to enter into the Lease-Option with Respondent. While the County *has alleged* in its Petition for Alternative Writ of Mandamus that the Trustees had no power to grant the option, this is an allegation which no lawyer would find necessary to make *if the lawsuit was a bona fide attempt to compel the offering of the property to the County for sale.* Mandamus lies only to compel the performance of a ministerial duty;[8] the County alleges in its petition that a

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[6]Both the County and Trustees have attempted to join Respondent, but these efforts were timely opposed. (RSA. 46-85). The Florida Supreme Court recessed without ruling on the joinder issues.

[7]Respondent filed that action on June 20, 1972, the same day the deed was executed by the Courts commissioner and the land conveyed. Petitioners erroneously state that the declaratory judgment action was filed June 24. In fact, the Respondent's declaratory judgment action was filed in federal court before the parties in the mandamus action even attempted to add Aerojet as a party there. (SA 13-19); RSA 9-45).

[8]21 *Fla.Jur.*, Mandamus, §33, p. 339.

ministerial duty exists which obliges the Trustees to offer the County certain lands involved (and now conveyed to Respondent), before offering them to private parties. By-passing for a moment all the reasons why such a statute could not apply to an option contract entered many years before enactment of the statutory requirement in question, it is abundantly clear that *any* right of the County *under the statute* arises only when there will be a conveyance. For the County to allege that the option is unlawful is to allege that there will be no sale to Respondent, and necessarily that the County has no claim under the statute to have first refusal on the property. The County must allege an imminent conveyance to allege a statutory duty by the Trustees. Without a conveyance, the County has no right under the statute and thus no mandamus claim. The County's petition is contradictory on its face because of the "power to option" allegation. Clearer evidence could not be found of the intent of the County and Trustees in procuring an alternative writ of mandamus. Having failed to convince the District Court and Court of Appeals on the "power" theory, and apparently recognizing their failure to make a case before this Court for abstention, a last resort action is taken to bootstrap this case before the Florida Supreme Court.

Petitioners and the County have outsmarted themselves. To have an action pending in the Florida Supreme Court in time to make the argument which appears in the Petitioners' "Supplemental Brief" now before this Court, it was necessary to resort to mandamus, an action which may be commenced against state officers only in the Florida Supreme Court. Rule 4.5(b), *Fla.App.R.* To do so, however, it was necessary to limit the petition to a claim for performance of an alleged statutory, ministerial duty.

This meant: (1) Aerojet could not be made a party and (2) the issue of the Trustees' power to option certainly would not be presented. What we now have is a perfectly obvious attempt by Petitioners to have their cake and eat it too: a mandamus action in the Florida Supreme Court with an absurd contention that the "power" issue is there presented for decision.

Aerojet went to Court with its specific performance claim almost three years ago. *Aerojet General Corporation v. Askew et al*, 318 FSupp. 55 (D.C., N.D., Fla. 1970). This issue of power has been briefed and considered by both the District Court and the Court of Appeals,[9] as is set out in our reply brief to the certiorari petition. Both courts have rejected the contention, and their decision is amply supported by numerous Florida cases interpreting Petitioners' powers. This issue does not present a basis for certiorari review, as appears from our reply brief. That being the case, certiorari should be denied, and this case should finally be terminated.

To the extent that *any* of the arguments appearing in the Petitioners' "Supplemental Brief" could properly come before this Court, they should do so only if a Florida case deciding the issues is in fact presented to this Court for review. At this point, Petitioners are asking this Court to stand by while they engage in a diversionary lawsuit, involving issues which could not influence the granting or denial of certiorari here. Certainly there is no authority to ask this Court to grant certiorari so this case stays alive while Petitioners (and their friends) try to litigate themselves into what they think is a more favorable position on certain arguments.

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[9] *Aerojet General Corporation v Askew et al*, 453 F2d 819 (5 Cir. Fla. 1971).

Even if Petitioners were to secure a Florida Supreme Court ruling that they did not have power to option land — a contingency so remote as to be incredible — there would exist other Florida law bases for the decision of the Court of Appeals which would not be affected.[10] So long as *any* arguable basis for the decision can be cited, this Court has consistently ruled that it will not undertake certiorari review. *Spiegel v. Commissioner*, 335 U.S. 701 (1949); *Allegheny County v. Frank Mashuda Co.*, 360 U.S. 185 (1959); *Sims v. United States*, 359 U.S. 108 (1959); *Propper v. Clark*, 337 U.S. 472 (1949); *Richards v. United States*, 369 U.S. 1 (1962).

The District Court and the Court of Appeals have indulged Petitioners in their ceaseless requests for special treatment. On the ground that they are elected officers, and thus may be permitted to shift positions at will, Petitioners have asked for and been accorded every conceivable opportunity to present new and even contradictory positions.[11] There is *nothing* new happening *in this case*. Petitioners are simply contriving to find new fori for old arguments, and asking this Court to stand by to see what they can do. Surely there must come a point when Petitioners' special privileges should not be permitted to further delay the relief which Aerojet is due.

We respectfully submit that this case does not present a basis for granting certiorari, and that nothing the Petitioners are talking about doing would make the case a proper one for certiorari review. Under these circumstances, it is clear that certiorari should be denied.

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[10] See pp. 31, 32, Reply of Respondents to Petition for Certiorari.

[11] As noted in the Reply of Respondents to Petition for Certiorari (pp. 32, 34), Petitioners were granted leave to file supplemental briefs, after briefing was closed and the cause set for oral argument. In supplemental briefs, Petitioner repudiated previous concessions, and raised new issues for appellate decision.

CONCLUSION

For the reasons and upon the authorities presented herein and in the Respondent's Reply to the Petition for Writ of Certiorari, said Petition should be denied.

Respectfully submitted

George W. Wright Jr.

Karl B. Block Jr.

Attorneys for Respondent

Mershon, Sawyer, Johnston,
Dunwody and Cole
1600 First National Bank Building
Miami, Florida 33131
Of Counsel for Respondent

RESPONDENT'S SUPPLEMENTAL APPENDIX

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IN THE SUPREME COURT OF FLORIDA

CASE NO. 42,461

STATE OF FLORIDA, ex rel.
METROPOLITAN DADE COUNTY,
a political subdivision of the State of Florida,
Petitioner,

vs.

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, RICHARD B. STONE, Secretary of State of the State of Florida, ROBERT SHEVIN, Attorney General of the State of Florida, FRED O. DICKINSON, JR., Comptroller of the State of Florida, THOMAS D. O'MALLEY, Treasurer of the State of Florida; FLOYD T. CHRISTIAN, Commissioner of Education of the State of Florida, and DOYLE CONNOR, Commissioner of Agriculture of the State of Florida, comprising the Board of Trustees of the Internal Improvement Trust Fund, created under Chapter 253, F.S.,

Respondents.

(Filed June 9, 1972)

PETITION FOR THE ISSUANCE OF THE WRIT OF MANDAMUS

TO THE SUPREME COURT OF FLORIDA:

The Petition of the State of Florida, upon the relation or complaint of Metropolitan Dade County, a political subdivision of the State of Florida, respectfully shows:

1. Relator is Metropolitan Dade County, a political subdivision of the State of Florida.

2. Respondents are REUBIN O'DONOVAN ASKEW as the Governor of the State of Florida, RICHARD B. STONE as Secretary of State of the State of Florida, ROBERT SHEVIN as Attorney General of the State of Florida, FRED O. DICKINSON, JR. a Comptroller of the State of Florida, THOMAS D. O'MALLEY as Treasurer of the State of Florida, FLOYD T. CHRISTIAN as Commissioner of Education of the State of Florida, and DOYLE CONNOR as Commissioner of Agriculture of the State of Florida, as and constituting the Board of Trustees of the Internal Improvement Trust Fund, created by Section 253.02, F.S.

3. Jurisdiction of this Court is invoked under the provisions of Article V, Section 4, Subsection 2 of the Constitution of the State of Florida, in that the Respondents are State officers and comprise the Board of Trustees of the Internal Improvement Trust Fund, a board within the purview and meaning of this constitutional provision.

4. Respondents as such Trustees are charged with the administration of the trust fund specifically described in Section 253.01, Florida Statutes. Under the provisions of Section 253.02, Respondent Trustees are granted the "power to sell and transfer said lands" referred to in Section 253.01 "to the purchasers and receive payment for the same."

5. In December, 1961 the prior Trustees of the Internal Improvement Trust Fund, not those presently constituting the Board, granted an option to Aerojet-General

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Corporation to purchase the following described property, situated in Dade County, Florida, which constitutes part of the property designated and described in Section 253.01 F.S.:

> Sections 1 through 14, Township 57 South, Range 37 East; Sections 17 through 20, Township 56 South, Range 37 East; Sections 24 through 36, Township 56 South, Range 37 East; W½ of Section 5, Township 59 South, Range 38 East; Section 6, Township 59 South, Range 38 East.

This option was for a term of ten years and for a purchase price of $50. per acre. No legislative authority or power was then or ever has been vested in the Trustees to validly grant such an option.

6. Notwithstanding the existence of the alleged option, the Legislature of the State of Florida, in the exercise of its police power, enacted in 1965 Section 253.111, Florida Statutes, which provides in part as follows:

> "The Board of Trustees of the Internal Improvement Trust Fund of the State shall not sell or convey any land to which they hold title unless and until they shall afford an opportunity to the County in which the land is situated to receive such land for public purposes . . . ."

At the time of the enactment of this statute and at the present time, the Board of Trustees of the Internal Improvement Trust Fund hold title to the above described property. The alleged option, above referred to, cannot operate to oust the Legislature of its power to require the Trustees to afford to Dade County an opportunity to acquire these lands for public purposes. This statute (a)

denies the power of the Respondent State Board of Trustees to execute the alleged option, (b) even though the alleged option has been executed prohibits the Respondent Trustees from conveying title to such lands upon purported exercise of this option without first affording an opportunity to Petitioner to acquire these lands for public purposes, and (c) is the exercise of the police power to protect public lands from being conveyed to private interests when they are needed and desired by the County for public purposes.

7. Respondent Trustees have not afforded to Dade County an opportunity to acquire these lands for public purposes and Respondents will in the near future convey these lands to Aerojet-General Corporation pursuant to the terms of this option and under the order and judgment of the U.S. District Court for the Northern District of Florida and affirmed by the U. S. Court of Appeals for the Fifth Circuit.

8. Petitioner was not a party to the action in the U. S. District Court and the judgment rendered by the U. S. District Court is not binding upon the Petitioner and does not constitute a judgment forfeiting the Petitioner's right to acquire the above described lands for public purposes.

9. The right of Petitioner to acquire these lands for public purposes under the provisions of Chapter 253, Florida Statutes, is prior to and supersedes any right or interest of Aerojet-General Corporation to acquire these lands.

10. The interpretation and construction of this Florida Statute is purely a State matter governed by State law, the final arbiter of the meaning of this statute, the

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powers of Respondent Trustees, and the effect of Section 253.111 being vested in the Supreme Court of Florida.

11. The Relator, Metropolitan Dade County, has no other plain, complete, speedy, and adequate remedy.

12. The issues here involved are not issues of fact requiring the taking of testimony.

13. The Relator, Metropolitan Dade County, and the people of Dade County will sustain injury and damage if they are denied the use and ownership opportunity of this land.

WHEREFORE, the Petitioner Dade County prays that the Supreme Court of Florida issue its Alternative Writ of Mandamus directed to Reubin O'Donovan Askew as Governor of the State of Florida, Richard B. Stone as Secretary of State of the State of Florida, Robert Shevin as Attorney General of the State of Florida, Fred O. Dickinson, Jr., as Comptroller of the State of Florida, Thomas D. O'Malley as Treasurer of the State of Florida, Floyd T. Christian as Commissioner of Education of the State of Florida, and Doyle Connor as Commissioner of Agriculture of the State of Florida, comprising the Board of Trustees of the Internal Improvement Trust Fund created under Chapter 253, Florida Statutes, requiring them to afford to the Petitioner Dade County the right to acquire these lands or show cause why they have failed to comply with the orders of this Alternative Writ of Mandamus.

/s/ Stuart Simon

STUART SIMON
Dade County Attorney
1626 Dade County Courthouse
Miami, Florida 33130
and

/s/ Alan T. Dimond

Alan T. Dimond
Assistant County Attorney

State of Florida)
) SS
County of Dade)

STUART SIMON and ALAN T. DIMOND, being duly sworn, depose and say that they are the persons who executed the foregoing instrument; that they have read the same and know the contents thereof; that the matters stated therein are true to their knowledge.

/s/ Stuart Simon

STUART SIMON
Dade County Attorney

/s/ Alan T. Dimond

ALAN T. DIMOND
Assistant County Attorney

Subscribed and sworn to before
me this 8th day of June, 1972.

/s/ Charlotte A. Booz

Notary Public,
State of Florida, at Large

Notary Public State of Florida at Large
My Commission expires May 12, 1975
General Insurance Underwriters, Inc.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

DATE: JUNE 22, 1972

TO: Mr. Barry Scott Richard
Deputy Attorney General
Dept. of Legal Affairs
The Capitol
Tallahassee, Fla.

Mr. Philip S. Bennett
Gen. Counsel, St. of Fla.
Bd. of Trustees of the ITTF
Elliot Bldg.
Tallahassee, Fla.

Mr. George Wright
1600 First National Bank Bldg.
Miami, Fla. 33131

Mr. Stephen Marc Slepin, Counsel
St. of Fla., Bd. of Education
347 S. Duval St.,
Tallahassee, Fla.

RE: TCA 1534 (Case No.)
Aerojet-General Corp. etcl vs.
Reubin O'Donovan Askew etc.

. . . . . .

You are advised that on the 20th day of June 1972, the following action was taken in the above-entitled case by the Court.

DATE MOTION FILED: June 16, 1972

PLAINTIFF'S MOTION ( )

DEFENDANT'S MOTION (X)

TYPE OF MOTION: Motion for Reconsideration and Stay and Memorandum of Law

ACTION TAKEN: GRANTED ( ) DENIED (X)

REMARKS:

MARVIN S. WAITS, Clerk

BY: /s/ T. F. John

Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA,
TALLAHASSEE DIVISION

No. TCA 1831
(Filed June 20, 1972)

AEROJET-GENERAL CORP.,
an Ohio corporation,

Plaintiff,

vs.

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, RICHARD B. STONE, Secretary of the State of Florida, ROBERT SHEVIN, Attorney General of the State of Florida, FRED O. DICKINSON, JR., Comptroller of the State of Florida, THOMAS D. O'MALLEY, Treasurer of the State of Florida, FLOYD T. CHRISTIAN, Commissioner of Education of the State of Florida, and DOYLE CONNER, Commissioner of Agriculture of the State of Florida, as and constituting members of the Board of Trustees of the Internal Improvement Fund of the State of Florida; STEPHEN P. CLARK, Mayor of Metropolitan Dade County, and S. A. DANSYEAR, JOYCE GOLDBERG, HARVEY I. REISMAN, EDWARD T. GRAHAM, EDWARD C. FOGG, III, JAMES F. MCKILLIPS and HARRY P. CAIN, Commissioners of Metropolitan Dade County, as and constituting the Board of County Commissioners of Metropolitan Dade County, Florida; METROPOLITAN DADE COUNTY, FLORIDA; and STUART SIMON, County Attorney of Metropolitan Dade County, as County Attorney of Metropolitan Dade County, Florida,

Defendants.

COMPLAINT FOR DECLARATORY DECREE AND INJUNCTIVE RELIEF

Plaintiff sues Defendants and says:

1. The Plaintiff is a corporation duly incorporated, organized and existing under the laws of Ohio, with its principal place of business in a state other than the State of Florida.

2. REUBIN O'DONOVAN ASKEW is Governor of the State of Florida. RICHARD B. STONE is Secretary of the State of Florida. ROBERT SHEVIN is Attorney General of the State of Florida. FRED O. DICKINSON, JR. is Comptroller of the State of Florida. THOMAS D. O'MALLEY is Treasurer of the State of Florida. FLOYD T. CHRISTIAN is Commissioner of Education of the State of Florida. DOYLE CONNER is Commissioner of Agriculture of the State of Florida. In their respective official capacities, said Defendants are members of and constitute the Board of Trustees of the Internal Improvement Fund of the State of Florida. (Hereafter, "Trustees") Said Defendants are citizens of the State of Florida.

3. STEPHEN P. CLARK is Mayor of Metropolitan Dade County, Florida. S. A. DANSYEAR, JOYCE GOLDBERG, HARVEY I. REISMAN, EDWARD T. STEPHENSON, EDWARD T. GRAHAM, EDWARD C. FOGG, III, JAMES F. MCKILLIPS and HARRY P. CAIN are Commissioners of Metropolitan Dade County, Florida. The Defendants named in this paragraph are and constitute the Board of County Commissioners of Metropolitan Dade County, Florida (Hereafter, "Commissioners") Said Defendants are citizens of the State of Florida.

4. METROPOLITAN DADE COUNTY, (Hereafter, Dade County" or "County"), is a political subdivision of the State of Florida, having, under the provisions of the Florida Constitution, the powers of local self government.

5. STUART SIMON is County Attorney of Metropolitan Dade County, Florida. Said Defendant is a citizen of the State of Florida. (Hereafter, "County Attorney")

6. The matter in controversy herein exceeds the sum of Ten Thousand Dollars ($10,000.00), exclusive of interest and costs. This action arises under the Constitution of the United States, to enforce Plaintiff's Constitutional rights, as hereinafter more fully appears. This Court has jurisdiction of the cause pursuant to Title 28 U.S.C. §§1131, 1132.

7. On or about the 21st day of December, 1961, Plaintiff and the Trustees entered into a written Lease With Option to Purchase, a true and correct copy of which is attached hereto and by reference made a part hereof as Exhibit A. A memorandum of said Lease With Option to Purchase was recorded in the Public Records of Dade County, Florida, on December 17, 1962, in Official Records Book 3450, at page 470. Said Lease-Option was also entered into by the STATE OF FLORIDA, BOARD OF EDUCATION (hereafter "Board of Education"), the membership of which Board is identical to the membership of the Defendant Board of Trustees.

8. Pursuant to the Lease-Option contract, Plaintiff did exercise its option to purchase the lands described in the contract, by serving upon the Trustees and the Board of Education written notice of the exercise of said option

to purchase on September 8, 1969. Thereafter, the Trustees and Board of Education refused to perform their contract by decling to convey the property described in the Lease-Option to Plaintiff in return for payment of the specified purchase price. Thereupon, Plaintiff herein filed suit in this Court for specific performance of the contract, (Case TCA-1534) and in September 21, 1970, this Court entered Final Judgment of Specif Performance for Plaintiff (318 F. Supp. 55),which judgment was affirmed by the United States Court of Appeals, Fifth Circuit, (hereafter "Court of Appeals") on December 9, 1971 (453 F2d 819) and its mandate issued on March 9, 1972. That case presently pends before the United States Supreme Court on petition for writ of certiorari, as case number 71-1505, although applications by the Trustees and Board of Education for a stay of enforcement of this Court's Final Judgment by specific performance and the mandate of the Court of Appeals were made both to the Court of Appeals and the United States Supreme Court and denied.

9. Subsequent to affirmance by the Court of Appeals of this Court's judgment of specific performance aforementioned, while the cause remained pending on petition for writ of certiorari before the Supreme Court of the United States, and even as this Court was entering its orders to enforce its specific performance judgment of September 21, 1970, Defendant DADE COUNTY filed a petition for writ of mandamus (hereafter "the mandamus proceedings") in the Florida Supreme Court, seeking mandamus relief against the Defendant-TRUSTEES. Said Petition was filed by Defendant SIMON, purportedly pursuant to his authority to act as attorney for Defendant DADE COUNTY and Defendant COMMISSIONERS. True copy of said petition and memorandum in support

thereof are attached hereto as Exhibit B. Plaintiff is not a party to said mandamus proceeding. The Defendants who are parties to said mandamus proceedings are now engaged in what amounts to a friendly suit that attempts and would purport to invoke the application of a Florida Statute §253.111 to Plaintiff's contract (Exhibit A), that if so applied would unconstitutionally impair contractual rights held by Plaintiff and also attempts and purports to put in issue the question of impairment of Plaintiff's contractual rights by the issuance of a peremptory writ of mandamus, compelling the TRUSTEES to offer most of the aforesaid lands covered by Plaintiff's contract for sale to Dade County. Said Florida Statute was enacted long subsequent to the execution of the Lease-Option contract attached hereto as Exhibit A, and, therefore, has no application thereto, but, if so applied, as sought by Defendants in the mandamus proceedings, would impair the obligation of contract in the manner prohibited by Article 1, Section 10 of the United States Constitution.

10. The Supreme Court of Florida, upon the COUNTY's petition and TRUSTEES' consent thereto, (true copy of which is attached hereto as Exhibit C), has issued its alternative writ of mandamus (true copy of which is attached hereto as Exhibit D) compelling the Defendant TRUSTEES to offer for sale to the COUNTY most of the property lease-optioned to Plaintiff by the contract attached as Exhibit A, or to show cause by written return and brief on or before July 5, 1972, why a peremptory writ of mandamus so compelling the TRUSTEES should not issue. Said issuance of an alternative writ of mandamus is a ruling by the Supreme Court of Florida that prima facie, §253.111, Fla. Stats. applies to the contract attached hereto as Exhibit A. (Rule 4.5b(3), Florida Appellate Rules).

11. Defendants, jointly or severally, seek under color of law, to enforce a state statute which Plaintiff seeks to prevent on the ground that the statute is unconstitutional if applied as aforesaid, and if so applied and enforced against Plaintiff, would work irreparable injury for which injunctive relief as hereafter prayed for is necessary in aid of this Court's jurisdiction herein and to protect and effectuate its prior judgments and orders.

12. As to this Plaintiff, all issues of the applicability to its contract of §253.111, Fla. Stats., are res judicata as between Plaintiff and Defendant TRUSTEES, and the judgment of specific performance heretofore entered by this Court precludes the COUNTY from securing from the TRUSTEES title to the lands described in Exhibit A.

13. There is a genuine and bona fide dispute between Plaintiff and Defendants as to the issues of law herein above raised and alleged.

14. Plaintiff is without adequate remedy at law.

WHEREFORE, Plaintiff prays the Court will take jurisdiction of the cause and the parties, and:

a. Declare and adjudge that Florida Statute §253.111 does not apply to the contract attached hereto as Exhibit A, or is unconstitutional as violative of Art. 1, §10 U.S. Constitution, to the extent it may be applicable to such contract so as to deny to Plaintiff its contractual rights to acquire or retain title to the lands described in said contract.

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b. Preliminarily enjoin Defendants, jointly and severally, from proceeding in any way with the mandamus proceedings referred to above which is presently pending in the Supreme Court of Florida, and from the enforcement of any writ, judgment or order entered therein.

c. Preliminarily enjoining Defendants, jointly and severally, from instituting or prosecuting any other suit or action the object or purpose of which is to deny to Plaintiff the right to receive or retain title to the lands described in the contract attached as Exhibit A.

d. That, upon final hearing, the preliminary injunctives sought in paragraphs b and c above be made permanent.

e. Grant unto Plaintiff such other and further relief as the Court deems proper.

f. Grant unto Plaintiff its costs herein.

MERSHON, SAWYER,
JOHNSTON, DUNWODY
& COLE
Attorneys for Plaintiff
Aerojet-General Corporation
1600 First National Bank Building
Miami, Florida 33131

By_____
George W. Wright, Jr.

By_____
Karl B. Block, Jr.

EXHIBIT A

LEASE WITH OPTION TO PURCHASE

THIS AGREEMENT made and executed this 21st day of December, 1961, by and between the State of Florida, by and through the Trustees of the Internal Improvement Fund of the State of Florida, and the State Board of Education of Florida, component state agencies of the State of Florida, with offices located in Tallahassee, Leon County, Florida, and Aerojet-General Corporation, a corporation organized and existing under the laws of the State of Ohio, with principal place of business in Azusa, Los Angeles County, California.

WITNESSETH:

WHEREAS, the Trustees of the Internal Improvement Fund of the State of Florida and the State Board of Education of Florida are vested with title to certain State lands located in Dade County, Florida, and are charged with the administration, management, control, supervision, conservation and protection of these lands, and

WHEREAS, said aforementioned Government agencies have been advised by Aerojet-General Corporation that it has a need for a large tract of land, a part of which consists of these State lands, for the purpose of establishing a manufacturing plant and associated facilities to be used in production activities which are designed to strengthen the defense posture of the United States, and

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WHEREAS, the best interests of the people of the State of Florida will be served by said State lands being devoted to such usage, the aforementioned government agencies have heretofore, in compliance with statutory requirements of the State of Florida, taken such action as is necessary to permit such a use of said State lands as aforesaid, and

WHEREAS, all statutory requirements have been satisfied and other necessary action taken, the Trustees of the Internal Improvement Fund of the State of Florida and the State Board of Education of Florida, component state agencies of the State of Florida, are authorized and empowered to enter into this Agreement and to authorize its execution.

NOW, THEREFORE, IT IS MUTUALLY UNDERSTOOD AND AGREED that for and in consideration of the sum of TEN DOLLARS ($10.00) paid by each party hereto to the other, receipt of which the parties each and severally acknowledge and in further consideration of the mutual covenants of the respective parties hereto, it is hereby agreed by and between the Trustees of the Internal Improvement Fund of the State of Florida, and the State Board of Education of Florida, component state agencies of the State of Florida, hereinafter referred to as "Lessor" and Aerojet-General Corporation, hereinafter referred to as "Lessee", as follows:

1. That the Lessor hereby leases to the Lessee the following described land, situate in Dade County, Florida, the ownership of said land being indicated opposite the description:

STATE OWNED LANDS IN THE HOMESTEAD AREA

Sections	Acres*	Ownership
1 thru 14 - T56S-R37E	8960	Trustees, I.I.F.
15 & 16 - T56S-R37E	1280	Board of Education
17 thru 20 - T56S-R37E	2560	Trustees, I.I.F.
21 thru 23 - T56S-R37E	1920	Board of Education
24 thru 36 - T56S-R37E	8320	Trustees, I.I.F.
16 - T57S-R37E	640	Board of Education
W ½ of 5 - T59S-R38E	328	Trustees, I.I.F.
6 - T59S-R38E	665	Trustees, I.I.F.
16 - T59S-R38E	640	Board of Education
TOTAL ACREAGE	25313	

*Acreages listed are based upon a presumption of 640 acres per section, but in the event the Lessee desires a more accurate total acreage it is hereby granted the right and privilege of having the land surveyed by a certified public land surveyor, at its own expense, to be approved by the Lessor and the total acreage shown as a result of such survey shall be considered the correct total acreage in lieu of the total acreage shown herein.

TO HAVE AND TO HOLD the same unto the said Lessee, its successors and assigns for a period of ten (10) years from date hereof upon the following terms and conditions:

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2. The Lessee agrees to pay an annual rental for said land of an amount equal to the sum of TWO DOLLARS AND FIFTY CENTS ($2.50) per acre for the period of the lease unless this lease is sooner terminated or cancelled as herein provided for. The annual rental herein agreed to be paid shall be due and payable in advance, the first such payment to be on execution of this Agreement with subsequent payments to be made on each anniversary date thereafter.

3. The Lessee herewith agrees and covenants to commence within twelve (12) months after the execution hereof, the construction and installation of a manufacturing plant and associated facilities on said land or upon lands contiguous thereto owned, leased or controlled by Lessee and in so doing to utilize the aforementioned described land in conjunction with the operation of such manufacturing plant and associated facilities.

4. The Lessor shall have the right to cancel this lease upon breach or failure of Lessee to comply with any of the covenants herein agreed to be kept or performed by Lessee. However, in the event of such breach or failure on the part of Lessee, Lessor shall give Lessee sixty (60) days notice, in writing, of its intention to cancel this lease and thereupon, unless such breach or failure be cured by Lessee within said sixty (60) day period, this lease and the terms hereof shall expire and come to an end on the date fixed in such notice as if the said date were the date originally fixed in this lease for the expiration thereof.

It is mutually understood and agreed that this lease shall terminate if option to purchase said lands hereinafter granted by Lessor to Lessee is exercised by Lessee and that

in such event no covenant herein made on the part of Lessee shall extend beyond such termination of this lease excepting the covenant of Lessee contained in paragraph 5 next below.

5. The Lessee agrees and herewith covenants that the land herein leased and for which an option to purchase is herein granted shall not be used by Lessee for purposes of land speculation in any manner whatsoever for a period of ten (10) years next following the execution of this Agreement without written approval of Lessor first had and obtained.

6. It is mutually agreed that all improvements of every kind and nature placed upon the lands during the term of lease shall, in all legal intendment, as between parties, be deemed and considered personal property of Lessee. Upon expiration or cancellation of the Lease, either Lessee shall have removed all such improvements providing Lessee at the time of such removal or removals has complied with all the terms and conditions of this Lease, or in the alternative, Lessee may elect to abandon such improvements, in which event title thereto shall pass to Lessor.

7. The Lessee further agrees and obligates itself to pay annually to the appropriate local public agencies a sum of money equal to, but considered as in lieu of, any and all ad valorem taxes which would be due and payable on all the lands described herein if title thereto were owned in fee by the Lessee; also, to pay any valid special assessment levied on said land. Said annual payments shall be paid by Lessee during the lease period or until purchase of said lands by Lessee is effectuated as provided for herein. The procedure for compliance with the provisions of this paragraph shall be the responsibility of the Lessee in cooperation with the local government agencies affected.

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8. The Lessor herewith grants to the Lessee the exclusive right, option and privilege to purchase all of the land described herein at any time within the ten (10) year lease period at and for a price of Fifty Dollars ($50.00) per acre. In the event the Lessee exercises its right, option and privilege to purchase the above described land, the purchase price of said land to be determined by the number of acres multiplied by Fifty Dollars ($50.00), less the amount of any unearned rent paid by Lessee under the terms of this lease shall be payable as follows:

(a) Upon the election of Lessee, the total amount of the purchase price to be determined, as aforesaid, shall be paid to Lessor simultaneously with delivery to Lessee of a deed to said lands vesting good and merchantable fee simple title thereto in Lessee subject only to applicable statutory rights and reservations in effect on date of conveyance and the covenant on the part of Lessee to be kept and performed contained in paragraph 5 above, or

(b) Upon election of Lessee, the payment of any amount equal to or in excess of twenty per cent (20%) of the total purchase price to be determined, as aforesaid, shall be paid to Lessor simultaneously with the execution of a contract to purchase by and between the parties hereto, which contract to purchase shall provide for a promissory note for an amount equal to the unpaid balance due to Lessor from Lessee for purchase price of said lands described herein, which note shall be paid to Lessor by Lessee in ten (10) equal and consecutive annual installments together with interest on the unpaid balance thereof at the rate of five per cent (5%) per annum. Lessee shall

have the express right and privilege to pay up to and including the entire unpaid balance of any promissory note representative of the unpaid balance of the purchase price at any time after the execution thereof, without penalty. Upon payment to Lessor by Lessee of the promissory note representing the balance due on contract to purchase, the Lessor agrees to deliver to said Lessee a fee simple deed to said lands vesting good and merchantable fee simple title in Lessee, subject only to the applicable statutory rights and reservations in effect on date of the contract to purchase and the covenant of Lessee contained in paragraph 5 above.

9. This Lease shall not be subject to assignment on the part of Lessee without written approval of Lessor first had and obtained.

10. The Lessee shall save Lessor harmless from any liability to any third person or property which might result from operations conducted by Lessee under the terms of this Lease prior to exercise of option herein granted to purchase the land herein described.

11. Lessee agrees and obligates itself to grant to the Central and Southern Florida Flood Control District, or its successor, such easements and rights of entry upon the lands herein described as will be needed or required to make or cause to be made and constructed thereon such canals, cuts, sluiceways, dikes and other works as might, in the judgment of the said Flood Control District, or its successor, be necessary and needful for drainage and reclamation of the land; also to grant to the said Flood Control District, or its successor, the right to take from the said land and to use such gravel, stone or earth as

might, in the judgment of the said Flood Control District, or its successor, be necessary to use in the construction of said canals, cuts, sluiceways, dikes and other works upon said land for the purposes hereinbefore set forth.

IN WITNESS WHEREOF the Trustees of the Internal Improvement Fund and the State Board of Education, hereinabove referred to as Lessor, have hereunto set their hands and affixed their respective seals and the seal of the Commissioner of Agriculture of the State of Florida and the Aerojet-General Corporation, hereinabove referred to as Lessee, has caused its name to be signed by its duly authorized officers and attested by its Secretary and affixed its corporate seal, in triplicate, the day and year first above written.

/s/ Faris Bryant (SEAL)

Governor

/s/ J. Edwin Larson (SEAL)

State Treasurer

/s/ Ray E. Green (SEAL)

Comptroller

/s/ Richard W. Ervin (SEAL)

Attorney General

(SEAL, TRUSTEES, INTERNAL IMPROVEMENT FUND)

/s/ Doyle Conner (SEAL)

Commissioner of Agriculture

(SEAL,
COMMISSIONER
OF AGRICULTURE)

As and Constituting the Trustees of the Internal Improvement Fund of the State of Florida.

/s/ Faris Bryant (SEAL)

Governor

/s/ John Adams (SEAL)

Secretary of State

/s/ Richard W. Ervin (SEAL)

Attorney General

/s/ J. Edwin Larson (SEAL)

State Treasurer

/s/ Albert [illegible] (SEAL)

Superintendent of Public Instruction

As and Constituting the Board of Education of the State of Florida.

Lessor.

AEROJET-GENERAL CORPORATION, an Ohio corporation

By /s/ A. H. Rude (SEAL)

Chairman of the Board

ATTEST:
/s/ T. E. Beehan

Secretary

Lessee.

STATE OF CALIFORNIA)
:ss
COUNTY OF LOS ANGELES)

I HEREBY CERTIFY that before me personally appeared A. H. RUDE, Chairman of the Board and T. E. BEEHAN, Secretary of Aerojet-General Corporation, a corporation organized and existing under and by virtue of the laws of the State of Ohio, to me known to be the persons described in and who executed the foregoing instrument and severally acknowledged the execution thereof to be their free act and deed as such officers pursuant to lawful authority theretofore given by said Corporation for the uses and purposes therein mentioned; and that they affixed thereto the official seal of said corporation, and the said instrument is the act and deed of said corporation.

WITNESS my hand and official seal in the County of Los Angeles, State of California, this 21st day of December, A.D. 1961.

/s/ W. Jean Brewer

Notary Public

W. JEAN BREWER - Notary Public
In and for the County of Los Angeles
and State of California
My Commission Expires March 19, 1965

EXHIBIT B

IN THE SUPREME COURT OF FLORIDA

CASE NO. 42,461

STATE OF FLORIDA, ex rel. METROPOLITAN DADE COUNTY, a political subdivision of the State of Florida,

Petitioner,

vs.

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, RICHARD B. STONE, Secretary of State of the State of Florida, ROBERT SHEVIN, Attorney General of the State of Florida, FRED O. DICKINSON, JR., Comptroller of the State of Florida, THOMAS D. O'MALLEY, Treasurer of the State of Florida, FLOYD T. CHRISTIAN, Commissioner of Education of the State of Florida, and DOYLE CONNER, Commissioner of Agriculture of the State of Florida, comprising the Board of Trustees of the Internal Improvement Trust Fund, created under Chapter 253, F.S.,

Respondents.

PETITION FOR THE ISSUANCE OF THE WRIT OF MANDAMUS

TO THE SUPREME COURT OF FLORIDA:

The Petition of the State of Florida, upon the relation or complaint of Metropolitan Dade County, a political subdivision of the State of Florida, respectfully shows:

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1. Relator is Metropolitan Dade County, a political subdivision of the State of Florida.

2. Respondents are REUBIN O'DONOVAN ASKEW as the Governor of the State of Florida, RICHARD B. STONE as Secretary of State of the State of Florida, ROBERT SHEVIN as Attorney General of the State of Florida, FRED O. DICKINSON, JR. as Comptroller of the State of Florida, THOMAS D. O'MALLEY as Treasurer of the State of Florida, FLOYD T. CHRISTIAN as Commissioner of Education of the State of Florida, and DOYLE CONNOR as Commissioner of Agriculture of the State of Florida, as and constituting the Board of Trustees of the Internal Improvement Trust Fund, created by Section 253.02, F.S.

3. Jurisdiction of this Court is invoked under the provisions of Article V, Section 4, Subsection 2 of the Constitution of the State of Florida, in that the Respondents are State officers and comprise the Board of Trustees of the Internal Improvement Trust Fund, a board within the purview and meaning of this constitutional provision.

4. Respondents as such Trustees are charged with the administration of the trust fund specifically described in Section 253.01, Florida Statutes. Under the provisions of Section 253.02, Respondent Trustees are granted the "power to sell and transfer said lands" referred to in Section 253.01 "to the purchasers and receive payment for the same."

5. In December, 1961 the prior Trustees of the Internal Improvement Trust Fund, not those presently constituting the Board, granted an option to Aerojet-General

Corporation to purchase the following described property, situated in Dade County, Florida, which constitutes part of the property designated and described in Section 253.01, F.S.:

> Sections 1 through 14, Township 57 South, Range 37 East; Sections 17 through 20, Township 56 South, Range 37 East; Sections 24 through 36, Township 56 South, Range 37 East; W ½ of Section 5, Township 59 South, Range 38 East; Section 6, Township 59 South, Range 38 East.

This option was for a term of ten years and for a purchase price of $50. per acre. No legislative authority or power was then or ever has been vested in the Trustees to validly grant such an option.

6. Notwithstanding the existence of the alleged option, the Legislature of the State of Florida, in the exercise of its police power, enacted in 1965 Section 253.111, Florida Statutes, which provides in part as follows:

> "The Board of Trustees of the Internal Improvement Trust Fund of the State shall not sell or convey any land to which they hold title unless and until they shall afford an opportunity to the County in which the land is situated to receive such land for public purposes . . . ."

At the time of the enactment of this statute and at the present time, the Board of Trustees of the Internal Improvement Trust Fund hold title to the above described property. The alleged option, above referred to, cannot operate to oust the Legislature of its power to require the Trustees to afford to Dade County an opportunity to acquire these lands for public purposes. This statute (a) denies the power of the Respondent State Board of Trus-

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tees to execute the alleged option, (b) even though the alleged option has been executed prohibits the Respondent Trustees from conveying title to such lands upon purported exercise of this option without first affording an opportunity to Petitioner to acquire these lands for public purposes, and (c) is the exercise of the police power to protect public lands from being conveyed to private interests when they are needed and desired by the County for public purposes.

7. Respondent Trustees have not afforded to Dade County an opportunity to acquire these lands for public purposes and Respondents will in the near future convey these lands to Aerojet-General Corporation pursuant to the terms of this option and under the order and judgment of the U. S. District Court for the Northern District of Florida and affirmed by the U. S. Court of Appeals for the Fifth Circuit.

8. Petitioner was not a party to the action in the U. S. District Court and the judgment rendered by the U. S. District Court is not binding upon the Petitioner and does not constitute a judgment forfeiting the Petitioner's right to acquire the above described lands for public purposes.

9. The right of Petitioner to acquire these lands for public purposes under the provisions of Chapter 253, Florida Statutes, is prior to and supersedes any right or interest of Aerojet-General Corporation to acquire these lands.

10. The interpretation and construction of this Florida Statute is purely a State matter governed by State law, the final arbiter of the meaning of this statute, the powers of Respondent Trustees, and the effect of Section 253.111 being vested in the Supreme Court of Florida.

11. The Relator, Metropolitan Dade County, has no other plain, complete, speedy, and adequate remedy.

12. The issues here involved are not issues of fact requiring the taking of testimony.

13. The Relator, Metropolitan Dade County, and the people of Dade County will sustain injury and damage if they are denied the use and ownership opportunity of this land.

WHEREFORE, the Petitioner Dade County prays that the Supreme Court of the State of Florida issue its Alternative Writ of Mandamus directed to Reubin O'Donovan Askew as Governor of the State of Florida, Richard B. Stone as Secretary of State of the State of Florida, Robert Shevin as Attorney General of the State of Florida, Fred O. Dickinson, Jr., as Comptroller of the State of Florida, Thomas D. O'Malley as Treasurer of the State of Florida, Floyd T. Christian as Commissioner of Education of the State of Florida, and Doyle Connor as Commissioner of Agriculture of the State of Florida, comprising the Board of Trustees of the Internal Improvement Trust Fund created under Chapter 253, Florida Statutes, requiring them to afford to the Petitioner Dade County the right to acquire these lands or show cause why they have failed to comply with the orders of this Alternative Writ of Mandamus.

/s/ Stuart Simon

STUART SIMON
Dade County Attorney
1626 Dade County Courthouse
Miami, Florida 33130

and

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/s/ Alan T. Dimond

Alan T. Dimond
Assistant County Attorney

State of Florida)
)SS
County of Dade)

STUART SIMON and ALAN T. DIMOND, being duly sworn, depose and say that they are the persons who executed the foregoing instrument; that they have read the same and know the contents thereof; that the matters stated therein are true to their knowledge.

/s/ Stuart Simon

STUART SIMON
Dade County Attorney

/s/ Alan T. Dimond

ALAN T. DIMOND
Assistant County Attorney

Subscribed and sworn to before
me this 8th day of June, 1972.

/s/ Charlotte A. Booz

Notary Public,
State of Florida, at Large

My Commission Expires May 12, 1975
General Insurance Underwriters, Inc.

IN THE SUPREME COURT OF FLORIDA

CASE NO. 42,461

STATE OF FLORIDA, ex rel. METROPOLITAN DADE COUNTY, a political subdivision of the State of Florida,

Petitioner,

vs.

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, RICHARD B. STONE, Secretary of State of the State of Florida, ROBERT SHEVIN, Attorney General of the State of Florida, FRED O. DICKINSON, JR., Comptroller of the State of Florida, THOMAS D. O'MALLEY, Treasurer of the State of Florida, FLOYD T. CHRISTIAN, Commissioner of Education of the State of Florida, and DOYLE CONNOR, Commissioner of Agriculture of the State of Florida, comprising the Board of Trustees of the Internal Improvement Trust Fund, created under Chapter 253, F.S.,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR THE ISSUANCE OF THE WRIT OF MANDAMUS

State of Florida ex rel. Metropolitan Dade County's Petition for the Issuance of the Writ of Mandamus is filed pursuant to Rule 2.1(a)(5) and 4.5(b) of the Florida Appellate Rules. This Honorable Court has jurisdiction to issue an alternative writ since a state officer(s), board, or other agency authorized to represent the public generally is named as respondent; specifically

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Respondents are REUBIN O'DONOVAN ASKEW as the Governor of the State of Florida, RICHARD B. STONE, as Secretary of State of the State of Florida, ROBERT SHEVIN as Attorney General of the State of Florida, FRED O. DICKINSON, JR. as Comptroller of the State of Florida, THOMAS D. O'MALLEY as Treasurer of the State of Florida, FLOYD T. CHRISTIAN as Commissioner of Education of the State of Florida, and DOYLE CONNOR as Commissioner of Agriculture of the State of Florida, as and constituting the Board of Trustees of the Internal Improvement Trust Fund, created by Section 253.02, F.S.

STATEMENT OF THE CASE AND ARGUMENT

In December, 1961, the Trustees of the Internal Improvement Trust Fund granted a ten-year option to purchase at fifty dollars ($50.00) an acre to Aerojet General Corporation to the following lands located in Dade County, Florida:

> Sections 1 through 14, Township 57 South, Range 37 East; Sections 17 through 20, Township 56 South, Range 37 East; Sections 24 through 36, Township 56 South, Range 37 East; W ½ of Section 5, Township 59 South, Range 38 East; Section 6, Township 59 South, Range 38 East.

The above lands consist of 20.833 acres. Aerojet did not attempt to exercise this option until 1969.

An option to purchase land does not vest the holder of the option with any interest, legal or equitable, in the land

itself. Therefore, the Trustees continued to hold the fee simple title to these lands and still hold the fee simple title to these lands and they have not been conveyed.

These lands were acquired pursuant to an act of Congress approved September 28, 1850. See Trustees of Internal Improvement Fund, et al. v. Root, 58 So. 371.

The patent issued pursuant to this act of Congress provided that the U.S. granted these lands to the State of Florida, in fee simple, "subject to the disposal of the legislature thereof." Everglades Co. v. Bryant, 87 So. 68.

After the granting of the option but prior to any effort to exercise it by Aerojet, the Legislature of the State of Florida, pursuant to its police power, directed that the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida "shall not sell or convey any land to which they hold title unless and until they shall afford an opportunity to the County in which such land is situated to receive such land for public purposes." Section 253.111 F.S. Therefore, the Trustees have a clear legal duty—ministerial act—involving no judgment or discretion.

Aerojet has brought proceedings in the Federal Court and has procured a judgment requiring the Trustees to convey these lands to it upon the payment by Aerojet of $50.00 an acre. No conveyance as yet has been made. Title is vested still in the Trustees. The Trustees have appealed this decision and have filed a Petition for Writ of Certiorari to the Supreme Court of the United States. That petition is now pending and undisposed of.

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The clear intent of Section 253.111 F.S. is to preserve all public land for public use if the land is needed and desired by the County within which the land is located. The statute would appear to negate the power of the Trustees of the Internal Improvement Trust Fund to give a ten-year option to purchase public land and thus to frustrate and contract away the police power of the State of Florida over lands the title to which is vested in the Trustees. The title to these lands was vested in the Trustees in 1965. The unexercised option to purchase vested no interest or estate in Aerojet. Warren v. City of Leesburg, 203 So.2d 552. The statute would therefore appear to be applicable to the lands involved.

From an examination of the opinion of the Court of Appeals, Fifth Circuit, in the Aerojet case, cited at 453 F.2d 819, the rights of Metropolitan Dade County were not before the Court and have not been adjudicated by that opinion. Under the provisions of Section 253.111 F.S. the Trustees "shall not sell or convey" the lands involved "to which they hold title unless and until they shall afford an opportunity" to Metropolitan Dade County "to receive such lands for public purposes." An option contract is not a contract of sale within any definition of the term. South Investment Co. v. Norton, 57 So.2d 1, 2. The Trustees are required to "notify the Board of County Commissioners" of Metropolitan Dade County "that such land is available to such County, which notification shall be given by registered mail, return receipt requested." No such notification has been given to Metropolitan Dade County, even though the trustees are under an imperative legal duty to provide such notification.

It will undoubtedly be contended that the option contract rights obtained by Aerojet in 1961 permitting the purchase of substantial state lands at an unconscionably low price effective over a lengthy period of years cannot be impaired by the subsequent enactment of Section 253.111 Florida Statutes, without violating Aerojet's constitutional rights. Such a contention is without merit, in our view.

A valid exercise of the public's police power through the Legislature on a matter of overpowering public interest is valid, even though it may affect existing contractual obligations. City of El Paso v. Simmons, 379 U.S. 497, 85 S.Ct. 577. See also 6 Fla. Jur., Constitutional Law, Sec. 177 and the cases cited thereunder. The section states:

> "The prohibition against laws impairing the obligation of contracts is not a limitation upon the exercise of the police power. Generally speaking, the inhibition of the Federal Constitution upon the impairment of the obligations of contracts by the states is not violated by the legitimate exercise of legislative power in securing the health, safety, morals, and general welfare. The question is not whether the legislative action affects contracts incidentally or directly or indirectly, but whether the legislation is directed to a legitimate end and the measures taken are reasonable and appropriate to that end."

If a contract may be impaired by legislation enacted after the execution of such contract, the legislation must attempt to secure the health, safety, morals or welfare of the people. It may not properly be contended in this case that the grant of the first opportunity to counties to

acquire state owned lands for public recreational purposes constitutes anything except an action in aid of the public health, safety and welfare. This is particularly true when the county involved is both the most populous and the most densely populated urban area in the state and the option holder is a commercial corporation that will obviously use the land upon acquisition for mercantile purposes. In our opinion Section 253.111, Florida Statutes, is directed to a legitimate and socially beneficial end, seeks to obtain this end of preserving the public's domain for the benefit of the public through rational and non-discriminatory means, and may therefore validly impair Aerojet's option. See Ferguson v Skrupa (1962) 372 U.S. 726, 10 L.ed 2d 93, 83 S.Ct. 1028, and 95ALR. 2d 1347.

Metropolitan Dade County requires affirmative judicial action to establish its right of first refusal, before the Trustees are required to convey this property to Aerojet. Therefore, Metropolitan Dade County files this petition, so that the public interest in preserving these lands, for public use, is preserved.

Metropolitan Dade County has instituted proceedings in the Supreme Court of Florida against the Trustees of the Internal Improvement Trust Fund seeking a Writ of Mandamus requiring the issuance of the notification to Dade County required by Section 253.111 F.S. and a Prohibition against the conveyance of this land. The Federal Court did not consider the effect of Section 253.111 F.S. as it applied to the power of the Trustees to perform the option without first giving Dade County its right of first refusal. The final authority is vested in the Supreme Court of Florida to make this determination because this is purely a State matter.

The relator has no other plain, speedy and adequate remedy. Metropolitan Dade County respectfully requests this Honorable Court to grant the requested relief.

STUART SIMON
Dade County Attorney

by /s Alan T. Dimond

ALAN T. DIMOND
Assistant Dade County Attorney
1626 Dade County Courthouse
Miami, Florida 33130

EXHIBIT C

IN THE SUPREME COURT OF
THE STATE OF FLORIDA

STATE OF FLORIDA ex rel METROPOLITAN DADE COUNTY, a political instrumentality of the State of Florida,

Petitioner

vs.

REUBIN O'D ASKEW, et al, comprising the Board of Trustees of the Internal Improvement Trust Fund,

Respondents

(Filed June 9, 1972)

WAIVER OF NOTICE OF HEARING AND CONSENT TO ISSUANCE OF ALTERNATIVE WRIT OF MANDAMUS

BLEED THROUGH POOR COPY

Comes now Respondents, by and through their undersigned counsel and waive notice of hearing and consent to issuance of an alternative writ of mandamus in this cause.

Robert L. Shevin
Attorney General

/s/ Barry S. Richard

Barry S. Richard
Deputy Attorney General
The Capitol
Tallahassee, Florida

/s/ M. Stephen Turner

M. Stephen Turner
General Counsel
Board of Trustees
Eliott Building
Tallahassee, Florida

I hereby certify that I have served a copy of the foregoing to Stuart L. Simon, County Attorney, Dade County Court House, Miami, Florida, this 9th day of June, 1972.

/s/ M. Stephen Turner

M. Stephen Turner

A TRUE COPY
Attest:
SID J. WHITE, Clerk
Supreme Court of Florida
by name illegible
Deputy Clerk

EXHIBIT D

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A.D. 1972
MONDAY, JUNE 12, 1972

STATE OF FLORIDA, ex rel. METROPOLITAN DADE COUNTY, a political subdivision of the State of Florida,

Petitioner,

vs.

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, RICHARD B. STONE, Secretary of State of the State of Florida, ROBERT SHEVIN, Attorney General of the State of Florida, FRED O. DICKINSON, JR., Comptroller of the State of Florida, THOMAS D. O'MALLEY, Treasurer of the State of Florida, FLOYD T. CHRISTIAN, Commissioner of Education of the State of Florida, and DOYLE CONNOR, Commissioner of Agriculture of the State of Florida, comprising the Board of Trustees of the Internal Improvement Trust Fund, created under Chapter 253, F.S.,

Respondents.

ALTERNATIVE WRIT OF MANDAMUS

CASE NO. 42,461

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA TO REUBIN O'DONOVAN ASKEW, GOVERNOR OF THE STATE OF FLORIDA, RICHARD B. STONE, SECRETARY OF STATE OF

THE STATE OF FLORIDA, ROBERT SHEVIN, ATTORNEY GENERAL OF THE STATE OF FLORIDA, FRED O. DICKINSON, JR., COMPTROLLER OF THE STATE OF FLORIDA, THOMAS D. O'MALLEY, TREASURER OF THE STATE OF FLORIDA, FLOYD T. CHRISTIAN, COMMISSIONER OF EDUCATION OF THE STATE OF FLORIDA, AND DOYLE CONNOR, COMMISSIONER OF AGRICULTURE OF THE STATE OF FLORIDA, COMPRISING THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND, CREATED UNDER CHAPTER, F.S., GREETING:

WHEREAS upon Petition filed herein by Petitioner-Relator it has been made to appear that:

1. Relator is Metropolitan Dade County, a political subdivision of the State of Florida.

2. Respondents are REUBIN O'DONOVAN ASKEW as the Governor of the State of Florida, RICHARD B. STONE as Secretary of State of the State of Florida, ROBERT SHEVIN as Attorney General of the State of Florida, FRED O. DICKINSON, JR. as Comptroller of the State of Florida, THOMAS D. O'MALLEY as Treasurer of the State of Florida, FLOYD T. CHRISTIAN as Commissioner of Education of the State of Florida, and DOYLE CONNOR as Commissioner of Agriculture of the State of Florida, as and constituting the Board of Trustees of the Internal Improvement Trust Fund, created by Section 253.02, F.S.

3. Jurisdiction of this Court is invoked under the provisions of Article V, Section 4, Subsection 2 of the

Constitution of the State of Florida, in that the Respondents are State officers and comprise the Board of Trustees of the Internal Improvement Trust Fund, a board within the purview and meaning of this constitutional provision.

4. Respondents as such Trustees are charged with the administration of the trust fund specifically described in Section 253.01, Florida Statutes. Under the provisions of Section 253.02, Respondent Trustees are granted the "power to sell and transfer said lands" referred to in Section 253.01 "to the purchasers and receive payment for the same."

5. In December, 1961 the prior Trustees of the Internal Improvement Trust Fund, not those presently constituting the Board, granted an option to Aerojet-General Corporation to purchase the following described property, situated in Dade County, Florida, which constitutes part of the property designated and described in Section 253.01, F.S.:

> Sections 1 through 14, Township 57 South, Range 37 East; Sections 17 through 20 Township 56 South, Range 37 East; Sections 24 through 36, Township 56 South, Range 37 East; W½ of Section 5, Township 59 South, Range 38 East; Section 6, Township 59 South, Range 38 East.

This option was for a term of ten years and for a purchase price of $50. per acre. No legislative authority or power was then or ever has been vested in the Trustees to validly grant such an option.

6. Notwithstanding the existence of the alleged option, the Legislature of the State of Florida, in the exercise of its police power, enacted in 1965 Section 253.111, Florida Statutes, which provides in part as follows:

> "The Board of Trustees of the Internal Improvement Trust Fund of the State shall not sell or convey any land to which they hold title unless and until they shall afford an opportunity to the County in which the land is situated to receive such land for public purposes . . . ."

At the time of the enactment of this statute and at the present time, the Board of Trustees of the Internal Improvement Trust Fund hold title to the above described property. The alleged option, above referred to, cannot operate to oust the Legislature of its power to require the Trustees to afford to Dade County an opportunity to acquire these lands for public purposes. This statute (a) denies the power of the Respondent State Board of Trustees to execute the alleged option, (b) even though the alleged option has been executed prohibits the Respondent Trustees from conveying title to such lands upon purported exercise of this option without first affording an opportunity to Petitioner to acquire these lands for public purposes, and (c) is the exercise of the police power to protect public lands from being conveyed to private interests when they are needed and desired by the County for public purposes.

7. Respondent Trustees have not afforded to Dade County an opportunity to acquire these lands for public purposes and Respondents will in the near future convey

these lands to Aerojet-General Corporation pursuant to the terms of this option and under the order and judgment of the U. S. District Court for the Northern District of Florida and affirmed by the U. S. Court of Appeals for the Fifth Circuit.

8. Petitioner was not a party to the action in the U. S. District Court and the judgment rendered by the U. S. District Court is not binding upon the Petitioner and does not constitute a judgment forfeiting the Petitioner's right to acquire the above described lands for public purposes.

9. The right of Petitioner to acquire these lands for public purposes under the provisions of Chapter 253, Florida Statutes, is prior to and supersedes any right or interest of Aerojet-General Corporation to acquire these lands.

10. The interpretation and construction of this Florida Statute is purely a State matter governed by State law, the final arbiter of the meaning of this statute, the powers of Respondent Trustees, and the effect of Section 253.111 being vested in the Supreme Court of Florida.

11. The Relator, Metropolitan Dade County, has no other plain, complete, speedy, and adequate remedy.

12. The issues here involved are not issues of fact requiring the taking of testimony.

13. The Relator, Metropolitan Dade County, and the people of Dade County will sustain injury and damage if they are denied the use and ownership opportunity of this land.

NOW, THEREFORE, this is to command you the Honorable REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, RICHARD B. STONE, Secretary of State of the State of Florida, ROBERT SHEVIN, Attorney General of the State of Florida, FRED O. DICKINSON, JR., Comptroller of the State of Florida, THOMAS D. O'MALLEY, Treasurer of the State of Florida, FLOYD T. CHRISTIAN, Commissioner of Education of the State of Florida, and DOYLE CONNOR, Commissioner of Agriculture of the State of Florida, comprising the Board of Trustees of the Internal Improvement Trust Fund, created under Chapter 253, F.S., to afford Dade County the right to acquire these lands or show cause, by return and brief, if any you have, on or before July 5, 1972, why Peremptory Writ of Mandamus commanding the same to be done by you should not issue.

WITNESS the Honorable B. K. Roberts, Chief Justice of the Supreme Court of Florida, and the Seal of said Court at Tallahassee, the Capital, on this the 12th day of June, 1972.

/s/ Sid J. White

Clerk of the Supreme Court
of Florida.

A TRUE COPY
Attest:
SID J. WHITE, Clerk
Supreme Court of Florida

by /s/ Signature illegible

Deputy Clerk

IN THE SUPREME COURT OF
THE STATE OF FLORIDA

Case No. 42,461

STATE OF FLORIDA ex rel METROPOLITAN DADE COUNTY, a political instrumentality of the State of Florida,

Petitioner,

vs.

REUBIN O'DONOVAN ASKEW, et al., comprising the Board of Trustees of the Internal Improvement Trust Fund,

Respondents.

MEMORANDUM OF LAW OF AMICUS CURIAE

This Memorandum of Law of Amicus Curiae is filed by Mershon, Sawyer, Johnston, Dunwody & Cole, attorneys for Aerojet-General Corporation (hereafter, "Aerojet"), as amicus curiae pursuant to motion and order of this Court.

It is difficult to decide where to start discussing the issues presented to this Court in form of a "Third Party Complaint" and a request to amend the consent alternative writ heretofore entered in the cause. On the question of whether Aerojet is a proper, necessary or indispensable party in a mandamus action by Dade County against the Trustees of the Internal Improvement Fund, on the theory that the county has a right to buy, pursuant to a 1965 statute, lands which were optioned to Aerojet in 1961, these issues are immediately confronted:

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1. The clear legal duty owed the County, if any, is one imposed on the Trustees by a statute (§253.111, Fla. Stats.) which does not and could not apply to private persons such as Aerojet. The fact that the lands involved have been deeded to Aerojet pursuant to a federal court judgment is a defense of the Trustees to the issuance of a peremptory writ ((State ex rel. Sherril v. Milam, 113 Fla. 491, 153 So. 125 (1933); Florida ex rel. Dixon v. Trustees of the Internal Improvement Fund, 20 Fla. 402 (1884)), but that fact does not amend the statute to impose any duty on private persons.

2. Original mandamus proceedings in the Florida Supreme Court may be brought only against state officers (Art. V, §4, Florida Constitution; State v. Cochran, 114 So.2d 797 (Fla. 1959); Cf., English v. Bryant, 152 So.2d 167 (Fla. 1963)), and so a claim by the County in mandamus against Aerojet, if any there could be, could not be made in this Court.

3. The Florida Appellate Rules (Rule 4.5) do not provide for third party practice. To the extent that this proceeding is properly before this Court, procedure in it is governed by Rule 4.5, F.A.R., and so the "Third Party Complaint" respondents wish to have served on Aerojet is not a pleading which is permitted in this proceeding.

4. The relator's request for amendment of the alternative writ herein (a writ entered after consent thereto by respondents), is not a procedure permitted by Rule 4.5, F.A.R. Relator says that Rule 1.660(c), Florida Rules of Civil Procedure, authorizes amendment of the alternative writ herein; but Rule 1.660, Fla. R.C.P., by its own terms, applies to proceedings in mandamus in circuit courts. As

pointed out above, mandamus proceedings in this Court are procedurally governed by Rule 4.5, F.A.R., which does not contain a provision for amendment of the alternative writ. In fact, Rule 4.5, F.A.R. does not provide for amending mandamus pleadings at all.

5. The relator's request for amendment of the alternative writ does not in any event state a prima facie case for issuance of an alternative writ of mandamus against Aerojet, and thus the alternative writ could not be so amended even if the procedural rules allowed for amendment. Rule 4.5(3), F.A.R. conditions the issuance of an alternative writ on statement in the petition of a prima facie case for mandamus. The relator's request does no more than allege that the resopndent has purportedly filed a "Third Party Complaint" against Aerojet, and therefore the alternative writ should be amended. The "Third Party Complaint" is not a proper procedure in this cause, as noted above, and so reference to it could not breathe life into the relator's request for amendment which otherwise has no prima facie vitality of its own.

6. Third party practice, as allowed by the rules of civil procedure, is predicated on the concept of third party liability to the defendant/third party plaintiff. The issues of liability between respondent/"third party plaintiff" and Aerojet/"third party defendant" regarding the realty which relator seeks to purchase have been finally adjudicated between respondent and Aerojet, and are res judicata. Respondents are estopped to re-litigate with Aerojet any issues which were or could have been litigated in the prior action between them which resulted in judgment for Aerojet and conveyance of the property. Miami Retreat Foundation v. Ervin, 62 So.2d 748 (Fla. 1952); Litt v. Tarson,

97 So.2d 46 (Fla.Appl 3rd 1957). Since Aerojet could under no circumstances be liable to respondents on their third party claim, Aerojet is not a proper third party defendant, even assuming arguendo that a third party action could be instituted in this proceeding.

Relator commenced this action on June 9, 1972, seeking mandamus to compel the performance of an alleged legal duty of respondents, purportedly arising by virtue of §253.111, Fla. Stats. That statute was enacted in 1965, and provides that when respondents desire to offer lands held by them for sale, such lands must first be offered to the County in which they lie. If such County wishes to buy the lands, and if a plan for development of the land for certain public purposes is authorized and funded by the County, then the County is given the right to buy such lands before they are offered for sale to private parties. §253.111(3). The relator has not alleged that, if offered the opportunity to buy the lands involved, it would adopt a plan for development which complies with the statutory requirements. In fact, at the County Commission meeting which immediately preceeded this action a vote of the Commission was not even taken on instituting the action. Rather, this action is the idea of one Commissioner which has not even been approved by a majority of the Commission. Notwithstanding this and a number of other things, respondents filed their consent to entry of an alternative writ of mandamus on the same day the petition was filed; and an alternative writ issued thereafter.

One rather important problem with the relator's claim for enforcement of the 1965 statute is that the lands involved were, pursuant to published notice of bids, op-

tioned to Aerojet in 1961, for the term of ten years, at a specified purchase price. Thus, in 1961, four years before the enactment of the statute relator seeks hereby to enforce, Aerojet became a lessee-optionee in possession of the premises, with the legal power to exercise its option at any time during the option period, and upon doing so, to become the equitable owner of the lands in possession of them. See, Orlando Realty Board Bldg. Corp v. Hilpert, 93 Fla. 954, 113 So. 100 (1927); Behrman v. Max, 102 Fla. 1094, 137 So. 120 (1931). By definition, an option is an offer to sell lands on specified terms, which by contract is extended to optionee for the period of the option. 33 Fla. Jur. Vendor and Purchaser, §15. Thus, the offer to sell the subject property was made in 1961, four years before the enactment of the statute upon which relator makes its claim. By contract, the offer remained open during the contract term, and the subsequent enactment of a statute could not affect that contractual right. The statute could not apply to a case in which respondents had no discretion to sell or refuse to sell, and no discretion to choose a buyer. Yet that is precisely the situation with respect to the Aerojet lease-option. The lease-option was a binding, specifically enforceable contract under which respondents were legally and equitably obliged to perform. Aerojet-General Corp. v. Askew, 318 F.Supp. 55 (N.D. Fla. 1970), aff'd. 453 F.2d 819 (5th Cir. 1971).

Another important deficiency in relator's claim for mandamus is that the respondents do not have title to the lands relator say it may want to buy, and so respondent cannot offer the lands for sale to relator. This action was instituted by relator after respondents (constituting the membership of the Trustees of the Internal Improvement Fund and the State Board of Education) had liti-

gated with Aerojet the issue of the specific enforceability of the lease-option contract made by them in 1961. Dade County took no action at the time the option was exercised, (September 8, 1969) or at the time Aerojet filed suit, or at the time that Aerojet was granted judgment by the trial court, (September 20, 1970) or at the time that the U.S. Court of Appeals affirmed the judgment (March 9, 1972). This case is and has been a matter of widespread notoriety in Dade County, and these proceedings were brought only after the Supreme Court of the United States had ordered the judgment to be enforced rather than stayed during certiorari proceedings there. Relator and respondents have been engaged in friendly "litigation" here. Respondents consented in writing to issuance of an alternative writ herein, and has filed a response which purports to admit that relator is entitled to purchase the lands which Aerojet owns in fee simple. Aerojet has title to the lands pursuant to the judgment of specific performance referred to above, and this itself is a defense to relator's petition, but respondents have not raised it as a defense. Instead, relator and respondents are doing their level best to involve Aerojet in these mandamus proceedings.

Based on the position taken by relator and respondents, that the 1965 statute applies to the 1961 offer of respondents to Aerojet to purchase certain lands, the impact of the 1965 statute would be that counties would be entitled to maintain mandamus proceedings in this Court to compel the undoing of all contracts for sale of respondents' lands which occurred prior to the enactment of the 1965 statute. If this statute applies to an option offer which was bid and contracted four years before the enactment of the statute giving counties first refusal on

sale of respondents' lands, there is no logical reason why mandamus would not lie to compel the offering of all other lands disposed of by respondents prior to the statute. Relator and Respondents argue that Aerojet should be in these proceedings on the theory that Aerojet has title to the property and thus allegedly owes the County the legal duty to offer its property to the County for sale. That theory is as absurd as one which says that all persons holding legal title to lands sold by respondents without giving the County first refusal are subject to mandamus to compel the giving of such an offer. Respondents had no authority to change their minds about offering the property to Aerojet, just as they would have no authority to change their minds about selling other lands to other persons. Nor does the statute, which applies to future offerings, create any right in the relator county to compel Aerojet or any other private party to offer to divest itself of contract rights bought and paid for.

In this context, therefore, Aerojet is not a proper party in this mandamus proceeding, as a matter of law. In fact, the conveyance of the property to Aerojet moots this proceeding, for this Court has often ruled that a peremptory writ will not issue when it is impossible of performance, Bradenton v. Oliver, 153 So. 165 (Fla. 1934); Fieldhouse v. Sewell, 171 So. 298 (Fla. 1936); Walker v. Best, 163 So. 696 (Fla. 1935). In Florida ex rel. Dixon v. Trustees of the Internal Improvement Fund, 20 Fla. 402 (1884), the Trustees contracted to convey property to one party, then conveyed it to another. Mandamus was brought to compel conveyance to the relator:

> . . . But (the Trustees) have no title to convey. Both the legal and equitable title have gone out

> of them to Mrs. Titus. There can be no plainer proposition that that they cannot grant what they have not, and of which they have no control. Nothing remains in them to convey . . . Id, at 404, Emphasis added.

Similarly, in State v. Milam, 153 So. 125 (1933), the Court said:

> If the allegations of fact found in the answer were sufficient to show that the respondents cannot legally comply with the mandate of the alternative writ . . . then the answer or return is sufficient and a peremptory writ of mandamus would not issue to compel . . . an impossible act, or an act which under the law, they cannot perform. Id, at 128, Emphasis supplied.

Here, the respondents could not under law abide by the alternative writ, and cannot in fact abide by a peremptory writ. They were under the dictates of a judgment to convey the property to Aerojet, which they did under Court order. They could not convey the property to Aerojet and convey it to the County, and thus under the law of the Milam case they had complete defense to this petition.

Procedurally, as noted above, Aerojet cannot be joined in this proceeding. Aerojet is under no statutory duty to relator and thus relator could not make a prima facie case against Aerojet for issuance of an alternative writ. Rule 4.5b(3), F.A.R. Even if a prima facie case could be plead, Aerojet is not a state officer and thus a mandamus action against Aerojet may not be brought in this Court. Article

V, §4, Florida Constitution, and cases cited above. There is no procedure under this Court's rules for amending mandamus pleadings in any event, though the procedure is specifically provided in the rules applicable to circuit court mandamus proceeding. Rule 4.5, F.A.R., Rule 1.660, F.R.C.P.

No third party practice is permitted under the appellate rules governing this proceeding, so the "third party complaint" filed by respondents is improper on its face. No summons should be issued on such a pleading. Indeed, there is no rule authority for issuance of summonses out of this Court, though the rules provide for issuance of summonses from trial courts. Even if third party practice were available in this Court, this case is obviously not a case for its use, for third party practice is based on theory that the third party defendant is liable to defendant/third party plaintiff for all or part of the claims of plaintiff. The issues between respondents (purported third party plaintiffs) and Aerojet (purported third party defendant) as to their rights in the subject lands, have been finally adjudicated and are res judicata. Aerojet-General Corp. v. Askew, supra. Thus, with respect to the matters in the third party complaint, Aerojet could not have any liability to respondents, as a matter of law.

Accordingly, your amicus curiae respectfully suggests that the request for issuance of a third party summons be denied, and the request for amendment of the alternative writ herein be denied.

Respectfully submitted,

MERSHON, SAWYER,

JOHNSTON, DUNWODY
& COLE
Attorneys, as amicus curiae
1600 First National Bank Building
Miami, Florida 33131

By_____
George W. Wright, Jr.

By_____
Karl B. Block, Jr.

WE HEREBY CERTIFY that a true and correct copy of the foregoing Memorandum of Law Amicus Curiae was mailed this 29th day of June, 1972 to: M. STEPHEN TURNER, ESQ., General Consel, Board of Trustees, Eliott Building, Tallahassee, Florida, BARRY S. RICHARD, ESQ., Deputy Attorney General, The Capitol, Tallahassee, Florida, STUART L. SIMON, ESQ., County Attorney, Dade County Courthouse, Miami, Florida and MARVIN S. WAITS, Clerk U.S. District Court, Northern District of Florida, Tallahassee Division, Tallahassee, Florida.

_____
Of Counsel

IN THE SUPREME COURT OF
THE STATE OF FLORIDA

CASE NO: 42,461

STATE OF FLORIDA ex rel METROPOLITAN DADE COUNTY, a political instrumentality of the State of Florida,

Petitioner,

vs.

REUBIN O'D. ASKEW, et al, comprising the Board of Trustees of the Internal Improvement Trust Fund,

Respondents,

vs.

AEROJET-GENERAL CORPORATION, a foreign corporation,

Third Party Respondents.

MOTION TO DISMISS AND/OR QUASH THIRD PARTY COMPLAINT

Aerojet-General Corporation (hereinafter "Aerojet") named as a third-party respondent in a Third-Party Complaint filed in the above entitled cause by the Respondents, Reubin O'D. Askew, et al., comprising the Board of Trustees of the Internal Improvement Trust Fund (hereinafter "the Trustees", moves the Court for an entry of an order dismissing and/or quashing said Third Party Complaint on the following grounds:

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1. Even if a Third Party Complaint could properly be filed in a mandamus action instituted in this Court, this Court lacks jurisdiction over the person of Aerojet and there is a lack of process or insufficiency of process and service of process upon Aerojet in that:

A. No summons or other process for said Third Party Complaint has been issued by this Court or by the Clerk thereof to Aerojet.

B. No summons or process for said Third Party Complaint has been served upon Aerojet in the manner provided by law and by an officer authorized by law to serve said summons or other process.

C. The alleged mailing of a copy of the Third Party Complaint, per letter dated June 26, 1972 (copy of which is attached hereto as Exhibit A) to Aerojet, c/o The Corporation Company, Jacksonville, Florida, by counsel for the Trustees does not constitute, and is an insufficient, service of said Third Party Complaint upon Aerojet.

D. Said Third Party Complaint was not served along with any summons or process issued to Aerojet by this Court or the Clerk thereof for said Third Party Complaint in the manner provided by law or by an officer authorized by law to serve such Third Party Complaint.

E. Original mandamus proceedings in this Court may be brought only against state officers (Article V. Sec. 4, Florida Constitution; Rule 4.5b, F.A.R) and so a claim in mandamus against Aerojet, if any there could be, could not be made in this Court.

2. This Court lacks jurisdiction over the subject matter of this cause insofar as the purported Third Party Complaint against Aerojet is concerned and over the person of Aerojet and said Third Party Complaint fails to state a cause of action against Aerojet in that:

A. Original mandamus proceedings in this Court may be brought only against state officers and, therefore, a claim in mandamus against Aerojet, a private party, if any there could be, could not be made in this Court.

B. Neither Article V. Section 4, Florida Constitution, nor Rule 4.5b, Florida Appellate Rules, under and pursuant to which this mandamus action was instituted in this Court by Dade County, nor any other provisions of the Florida Appellate Rules provide for third party practice. Therefore, a third party complaint is not a pleading authorized or permitted in a mandamus proceeding instituted in this Court.

C. It affirmatively appearing from the allegations of the County's Petition for Alternative Writ of Mandamus and the Trustee's Third Party Complaint that the subject lands were leased to Aerojet for the term of ten (10) years with an option to purchase at a specified purchase price during the lease term, in 1961, four (4) years before the enactment of Section 253.111, Florida Statutes, said statute has no application to and could not affect the contractual and property rights acquired by Aerojet under said lease-option.

D. Mandamus lies only to compel the performance by respondent of a clear legal duty and there is no

duty imposed by Section 253.111 Florida Statutes, even if applicable to the subject lands, upon Aerojet or any one other than the Trustees to first offer the subject lands to Dade County for purchase.

E. Since Aerojet could, under no circumstances, be liable to the Trustees on their Third Party Complaint, Aerojet is not a proper Third Party Defendant, even assuming arguendo that a Third Party Complaint could be filed in this mandamus proceeding in this Court.

F. Neither the County's Petition for Alternative Writ of Mandamus or the Trustee's Third Party Complaint have alleged the compliance or possibility of compliance with all of the conditions precedent prescribed by the provisions of Sec. 253.111, Florida Statutes for the offer of sale by the Trustees of the subject lands to Dade County.

G. Third party practice, even as allowable by the Florida Rules of Civil Procedure, which is applicable only to proceedings in trial courts (Rule 1.010), is predicated upon the concept of third party liability to the Defendant-Third Party Plaintiff and the issues of liability between the Defendant-Third Party Plaintiff (Trustees) and the Third Party Defendant (Aerojet) regarding the subject property have been litigated and finally adjudicated between the Trustees and Aerojet (Aerojet-General Corp. v. Askew (N.D. Fla., 1970) 318 F. Sup. 55 aff'd, 5 Cir. Fla., 1971) 453 F.2d 819), and the Trustees are estopped to relitigate said issues sought to be litigated by the Third Party Complaint filed by the Trustees against Aerojet in this proceeding.

H. The judgment of the Federal Court in Aerojet-General Corp. v. Askew (N.D. Fla., 1970) 318 F. Sup. 55 aff'd (5 Cir. Fla., 1971) 453 F. 2d 819) is res judicata of those issues raised and sought to be litigated by the Third Party Complaint filed herein by the Trustees against Aerojet and constitutes a bar to said Third Party Complaint.

I. It affirmatively appears from the allegations of the Trustees' return to the alternative writ of mandamus and their Third Party Complaint, herein, that Trustees do not have title to the lands which the county seeks to have offered to it for purchase and that fee simple title to said lands has heretofore been conveyed to and vested in Aerojet under and pursuant to order of the Federal Court. (Aerojet-General Corp. v. Askew (N.D. Fla., 1970) 318 F. Sup. 55, aff'd (5 Cir. Fla., 1971) 453 F.2d, 819).

J. It affirmatively appears that the Trustees, having heretofore conveyed the fee simple title to the subject lands to Aerojet, cannot possibly perform the alleged duty of the Trustees to first offer for sale to the County said lands, and, therefore, no preemptory writ of mandamus can be issued against the Trustees by this Court and the Trustees consequently cannot sustain any liability to the county for which it could assert liability over against Aerojet by way of a Third Party Complaint.

Mershon, Sawyer, Johnston,
Dunwody & Cole
1600 First National Bank Building
Miami, Florida 33131

BLEED THROUGH POOR COPY

Attorneys for Third Party
Respondent, Aerojet-General
Corporation

By /s/ George W. Wright, Jr.
George W. Wright, Jr.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss and/or Quash Third Party Complaint was mailed this 14th day of July, 1972 to:

Robert L. Shevin,
Attorney General
Department of Legal Affairs
The Capitol
Tallahassee, Florida 32304

M. Stephen Turner
General Counsel
Board of Trustees
Elliot Building
Tallahassee, Florida 32304

Stuart L. Simon, Esq.
County Attorney
Dade County Courthouse
Miami, Florida

/s/ George W. Wright, Jr.
George W. Wright, Jr.

IN THE SUPREME COURT OF
THE STATE OF FLORIDA

CASE NO. 42,461

STATE OF FLORIDA ex rel METROPOLITAN DADE COUNTY, a political instrumentality of the State of Florida,

Petitioner,

vs.

REUBIN O'D. ASKEW, et al., comprising the Board of Trustees of the Internal Improvement Trust Fund,

Respondents,

vs.

AEROJET-GENERAL CORPORATION, a foreign corporation,

Third Party Respondent.

BRIEF OF THIRD PARTY RESPONDENT, AEROJET-GENERAL CORPORATION, IN SUPPORT OF MOTION TO DISMISS AND OR QUASH THIRD PARTY COMPLAINT

MERSHON, SAWYER,
JOHNSTON, DUNWODY
& COLE
1600 First National Bank Building,
Miami, Florida 33131,
Attorneys for Third Party
Respondent, Aerojet-General
Corporation.

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INTRODUCTION

The parties to this mandamus proceeding will be hereinafter referred to as follows:

Petitioner, Metropolitan Dade County—"Dade County" or "the county".

Respondents and Third Party Complainants, Board of Trustees of the Internal Improvement Trust Fund—"Trustees"

Third Party Respondent, Aerojet-General Corporation—"Aerojet".

STATEMENT OF THE CASE AND FACTS

On June 9, 1972, Dade County filed in this Court against the Trustees its petition for an alternative writ of mandamus under and pursuant to Article V, Section 4(2), Florida Constitution, and Rule 4.5b, Florida Appellate Rules.[1]

The county alleged that the Trustees, in December, 1961, granted to Aerojet for a term of ten years an option to purchase, at a price of $50.00 per acre, certain lands located in Dade County, Florida, constituting a part of the Internal Improvement Trust Fund created by the provisions of §253.01, Florida Statutes. In 1965, it was alleged that the Florida legislature enacted §253.111, Florida

[1]Rule 4.5b provides in pertinent part:
"(1) When Entertained. No original petition in mandamus will be entertained by the Supreme Court unless a state officer, state board, state functionary, or an agency authorized to represent the public generally, is named as respondent."

Statutes, which, in substance required the Trustees, before selling any land in which they hold title, to first afford an opportunity to the county in which the land is situated to receive same for designated public purposes.

The county avered that §253.111 required the Trustees to afford to Dade County an opportunity to acquire those lands optioned to Aerojet four years previously, which the Trustees had not done and that the Trustees would, in the near future, convey those lands to Aerojet under and pursuant to the contract between Aerojet and the Trustees and pursuant to judgment of the United States District Court for the Northern District of Florida, as affirmed by the United States Court of Appeals for the Fifth Circuit. The county contended that its right to be afforded the opportunity to acquire such lands superceded the right and interests of Aerojet to acquire same. The county prayed for the issuance of an alternative writ of mandamus directing the Trustees to afford to the county the right to acquire such lands or show cause why they should or could not do so.

In this "friendly suit" between the county and the Trustees, the Trustees, on the same day this mandamus action was instituted, filed a written waiver of any notice of hearing upon the petition for alternative writ of mandamus and its consent to the issuance of an alternative writ. This Court, on June 12, 1972, issued an alternative writ of mandamus commanding the Trustees to afford Dade County the right to acquire the subject lands or to show cause, by return and brief, on or before July 5, 1972, why preemptory writ of mandamus commanding the same to be done should not issue. On June 22, 1972, the Trustees filed their written return to the alternative writ, alleging that, at the time the mandamus action was instituted, an order of the United States District Court for the Northern

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District of Florida, dated June 7, 1972, required them to convey by fee simple deed title to the subject lands to Aerojet within fifteen days thereafter, pursuant to summary judgment for Aerojet entered by that Court, affirmed by the United States Court of Appeals for the Fifth Circuit. Aerojet-General Corp. v. Askew et al., (N.D.Fla. 1970) 318 F.Supp.55, aff'd. (5 Cir. Fla., 1971) 453 F.2d 819. By order of the Federal District Court dated June 16, 1972, the Trustees were again directed to execute and deliver a fee simple deed conveying title to the subject lands to Aerojet and that upon their failure to do so, a commissioner to execute said deed in their place and stead would be appointed by that Court pursuant to the provisions of Rule 70, Federal Rules of Civil Procedure. A petition for reconsideration of said order filed by the Trustees was denied by the Federal District Court and on June 20, 1972, the Clerk of the United States District Court for the Southern District of Florida was appointed as commissioner to execute and deliver to Aerojet a deed to the subject lands with like effect as if done by the Trustees themselves pursuant thereto. Said deed was executed and delivered to Aerojet on the same date. The Trustees conclude their return, therefore, by alleging that Aerojet is liable for their inability to offer said lands to Dade County and pray that they be absolved from any duty to offer said lands to the county by reason of their inability to do so.

With their return to the alternative writ, the Trustees filed in the above cause a Third Party Complaint against Aerojet, setting forth the above history of the proceedings leading up to the conveyance of title to the subject lands to Aerojet, and avering that Aerojet is accountable for their alleged inability to offer said lands to Dade County. The Trustees, by said Third Party Complaint, request this

Court to "declare Third Party Respondent responsible to Metropolitan Dade County for the interest in the aforementioned lands conferred by §253.111, Florida Statutes, and obligated to take same action under said statute as Complainants would have had to take if not required to deed said lands to Third Party Respondent."

No summons or other process was issued for said Third Party Complaint by this Court or the Clerk thereof, and the Trustees have purportedly attempted to effect service of said Third Party Complaint, without summons or other process being issued or served, by sending a copy of said Third Party Complaint by mail to Aerojet, care of the Corporation Company, Jacksonville, Florida. (See Exhibit A to Aerojet's Motion to Dismiss and/or Quash Third Party Complaint.)

POINTS INVOLVED

POINT I

WHETHER OR NOT THIRD PARTY PRACTICE OBTAINS IN MANDAMUS PROCEEDINGS INSTITUTED IN THE SUPREME COURT OF FLORIDA SO AS TO AUTHORIZE THE FILING OF A THIRD PARTY COMPLAINT HEREIN?

POINT II

WHETHER OR NOT SECTION 253.111 FLORIDA STATUTES IS APPLICABLE TO A WRITTEN OPTION TO PURCHASE THE SUBJECT LANDS GRANTED AEROJET BY THE TRUSTEES FOUR YEARS PRIOR TO THE STATUTE'S ENACTMENT?

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POINT III

WHETHER OR NOT SECTION 253.111 FLORIDA STATUTES, EVEN IF APPLICABLE TO THE SUBJECT LANDS, IMPOSES ANY DUTY UPON AEROJET TO OFFER THE SUBJECT LANDS FOR SALE TO DADE COUNTY SO AS TO WARRANT MANDAMUS PROCEEDINGS AGAINST AEROJET?

POINT IV

WHETHER OR NOT THE JUDGMENT OF THE FEDERAL COURTS ORDERING SPECIFIC PERFORMANCE OF THE TRUSTEES' CONTRACT WITH AEROJET IS RES JUDICATA OF AND ESTOPS THE TRUSTEES FROM ATTEMPTING TO LITIGATE THE ISSUES SOUGHT TO BE RAISED BY THE THIRD PARTY COMPLAINT?

POINT V

WHETHER OR NOT THE CONVEYANCE OF THE SUBJECT LANDS TO AEROJET RENDERS THIS MANDAMUS PROCEEDING AND THE THIRD PARTY COMPLAINT HEREIN MOOT AND ACADEMIC?

POINT VI

WHETHER OR NOT THIS COURT LACKS JURISDICTION OVER THE PERSON OF AND THERE IS NO PROCESS OR INSUFFICIENT PROCESS AND SERVICE OF PROCESS UPON AEROJET?

ARGUMENT

POINT I

THIRD PARTY PRACTICE DOES NOT OBTAIN IN MANDAMUS PROCEEDINGS INSTITUTED IN THE SUPREME COURT OF FLORIDA SO AS TO AUTHORIZE THE FILING OF A THIRD PARTY COMPLAINT HEREIN.

The county's petition for alternative writ of mandamus was filed under the provisions of Article V, Section 4(2), Florida Constitution, and Rule 4.5b, Florida Appellate Rules. Under the Constitution and this rule, this Court is without jurisdiction to entertain a petition for writ of mandamus or to issue a writ of mandamus unless a state officer, board, commission, or other agency authorized to represent the public generally is named as a respondent. While the District Courts of Appeal have jurisdiction to issue writs of mandamus (Article V, Section 5[3]), mandamus proceedings in those courts are also governed by Rule 4.5, Florida Appellate Rules. Otherwise, all mandamus proceedings are governed by the provisions of Rule 1.660, Florida Rules of Civil Procedure, which rules apply only to suits "in the Circuit Courts and Civil Courts of Record and other trial courts."

There is no provision whatever in the Florida Appellate Rules for Third Party Practice, i.e., the filing of the Third Party Complaint, even in mandamus. While provision for Third Party Practice is made in the Florida Rules of Civil Procedure (Rule 1.180), those rules do not govern proceedings in this Court, but only in the Circuit Courts,

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Civil Courts of Record, and other trial courts. If third party practice were intended to be permitted in mandamus proceedings in this Court under the Florida Appellate Rules, clearly provision would have been made therein for same.

POINT II

SECTION 253.111, FLORIDA STATUTES, IS NOT APPLICABLE TO A WRITTEN OPTION TO PURCHASE THE SUBJECT LANDS GRANTED AEROJET BY THE TRUSTEES FOUR YEARS PRIOR TO THE STATUTE'S ENACTMENT.

It is clear from the face of the county's petition for alternative writ of mandamus and the Turstees Third Party Complaint against Aerojet that the Statute (Section 253.111, Florida Statutes), upon which the county predicates its claim for relief by way of mandamus, has no application to the option-contract between the Trustees and Aerojet. The option to purchase the subject lands at a specified price per acre, pursuant to competitive bids, which the Trustees had the right to accept or reject,[1] granted to Aerojet in the ten-year lease of the subject lands was entered into between the Trustees and Aerojet on December 21, 1961. Appropriate and valid notice of the sale and request for bids was published by the Trustees (and Board of Education) in compliance with statutory requirements, and the lease-option contract was clearly within the powers of the Trustees (and Board of Education to execute. [Aerojet-General Corporation v. Askew, supra]. Thus, four years before the enactment of the statute relied upon by the county and under which the Trustees

[1]Section 270.09, Florida Statutes.

assert liability over to Aerojet, Aerojet became a lessee-optionee in possession of the property, with the legal power to exercise its option at any time during the option period; and upon doing so, to become the equitable owner of the lands in its possession. [See Orlando Realty Board Bldg. Corp. v. Hilpert (1927), 93 Fla. 954, 113 So. 100; Behrman v. Max (1931), 102 Fla. 1094, 137 So. 120]. By definition, an option to purchase is an offer to sell lands on specified terms, which by contract is extended to the optionee for the period of the option. [33 Fla. Jur., Vendor and Purchaser, Section 15]. Accordingly, the offer to sell the subject lands was made in 1961, four years before the enactment of the statute sought to be invoked by the county against the Trustees and by the Trustees against Aerojet in its Third Party Complaint. By contract, the offer remained open during the contract term (ten years), and the subsequent enactment of such a statute as Section 253.111 could not affect that contractual right. The statute cannot apply to a case in which the Trustees had no discretion to sell or refuse to sell and no discretion to choose a buyer. Yet, that is precisely the situation with respect to the Aerojet lease-option. It was a binding, specifically enforceable contract which the Trustees were legally and equitably obliged to perform. [Aerojet-General Corporation v. Askew, supra.

Section 253.111 has no application to the lease-option contract between the Trustees and Aerojet, since it, by its own terms, provides only for the Trustees' notification to the Board of County Commissioners of the availability of such land "before consideration of any private offers." [Section 253.111(1)]. In the case at bar, the Trustees considered and accepted Aerojet's offer in 1961, four years

before Section 253.111 was ever enacted. On its face, it clearly has no application to the instant lease-option agreement between the Trustees and Aerojet.

Based upon the position taken herein by both the county and the Trustees that the 1965 statute applies to the 1961 offer of the Trustees to Aerojet for it to purchase the subject lands, the impact of the statute would be that counties could maintain mandamus proceedings in this Court to compel the undoing of all contracts for the sale of the Trustees' lands which occurred prior to the enactment of the 1965 statute. If it applies to an option offer which was bid and contracted for four years before the enactment of the statute giving counties the right of first refusal on the sale of lands belonging to the Trustees, there is no logical reason why mandamus would not lie to compel the offering of other lands disposed of by the Trustees prior to the statute's enactment. Both the county and the Trustees urge that Aerojet should be in this proceeding as a party on the theory that Aerojet has title to the property and allegedly owes the county the legal duty to offer its property to the county for sale. This theory is as absurd as one which says that all persons holding legal title to lands sold by the Trustees without giving the county the right of first refusal are subject to mandamus to compel the giving of such an offer. Trustees had no authority to change their minds about offering the property to Aerojet, just as they would have no authority to change their minds about selling other lands to other persons. Nor does the statute, which applies to future offerings by its own terms, create any right in either the county or the Trustees to compel Aerojet or any other private party to offer to divest itself of contract and property rights bought and paid for.

It is significant that neither the county nor the Trustees have alleged that, if the land were offered or could have been offered by the Trustees to the county, the county proposes to devote such lands to the requisite public purposes required by the statute and has prescribed or would prescribe the plan of development and time schedule therefor in compliance with the statute. [Section 253.111(3), Florida Statutes]. In fact, at the County Commission meeting, which immediately preceded the institution of this action by the county, a vote of the County Commission was not even taken on instituting this action.[2] As appears from the transcript, this suit was the idea of one County Commissioner, which was not even approved by a majority of the Commission. The Trustees, working hand-in-hand with the county, were quick to file their consent to the entry of an alternative writ of mandamus on the very day the petition therefor was filed by the county. So it is, at this late date, that the county, with the cooperation of the Trustees, have improperly sought to apply to a private party the provisions of a statute clearly inapplicable to the lease-option contract between Aerojet and the Trustees—a statute which the Trustees obviously felt inapplicable for their failure to assert it during the extended litigation over the subject lands between Aerojet and the Trustees in the Federal Courts. [Aerojet-General Corporation v. Askew, et al., supra].

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[2]See certified transcript of discussion of this matter before the Board of County Commissioners for Dade County on June 6, 1972, attached hereto as Exhibit I.

POINT III

SECTION 253.111 FLORIDA STATUTES, EVEN IF APPLICABLE TO THE SUBJECT LANDS, DOES NOT IMPOSE ANY DUTY UPON AEROJET TO OFFER THE SUBJECT LANDS FOR SALE TO DADE COUNTY SO AS TO WARRANT MANDAMUS PROCEEDINGS AGAINST AEROJET.

Even if arguendo the provisions of Section 253.111, Florida Statutes, could have any application to the lands to which Aerojet now holds title, it serves as no basis for a writ of mandamus to compel Aerojet to offer for sale said lands to the county. The statute, by its own terms, where applicable, imposes the duty of offering lands to which the Trustees hold title and propose to sell, first to the county upon the Trustees—not upon any private person or party who either is offering to purchase such lands or has already purchased and received title to same. The fact that the subject lands have been heretofore deeded to Aerojet pursuant to Federal Court Judgment is a complete defense of the Trustees to the issuance of a pre-emptory writ of mandamus herein [State ex rel Sherril v. Milam (1933), 113 Fla. 491, 153 So. 125; Florida ex rel Dixon v. Trustees of the Internal Improvement Fund (1884), 20 Fla. 402], but that fact does not amend the statute to impose any duty on private persons. If the statute were applicable to the subject lands and the Trustees violated any duty owed by them to the county, the county conceivably could have some type of action against the Trustees for damages, but the Trustees' conveyance of the lands to a private party without first offering the same to the county could not amend the

statute so as to require such private party to offer its land for sale to the county or any other person. Since Section 253.111, Florida Statutes, is the entire predicate for the county's institution of this mandamus action and the Trustees' Third Party Complaint against Aerojet, both must fall, as no legal duty is imposed by that statute (or any other, for that matter) upon Aerojet to now offer lands to which it holds title to the county or anyone else. Mandamus lies only to compel the performance of a ministerial act or clear legal duty owed by the respondent. 21 Fla. Jur., Mandamus, Section 33, page 339. No clear legal duty to offer its lands for sale to the county is imposed upon Aerojet by statute. Moreover, mandamus will lie only where there is no other adequate remedy. Reese v. Golden, (Fla. App. 1968), 209 So.2d 491. If the county has any complaint against the Trustees for violation by them of any duty owed to the county, or even against Aerojet because it acquired, pursuant to Federal Court Judgment, lands to which the county asserts a right of first refusal, mandamus will not lie.

POINT IV

THE JUDGMENT OF THE FEDERAL COURTS ORDERING SPECIFIC PERFORMANCE OF THE TRUSTEES' CONTRACT WITH AEROJET IS RES JUDICATA OF AND ESTOPS THE TRUSTEES FROM ATTEMPTING TO LITIGATE THE ISSUES SOUGHT TO BE RAISED BY THE THIRD PARTY COMPLAINT.

As heretofore pointed out, specific performance litigation between Aerojet and the Trustees has been pending in the Federal Courts since October of 1969. Judgment

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for Aerojet requiring specific performance was entered by the Federal District Court and affirmed unanimously by the United States Court of Appeals for the Fifth Circuit. [Aerojet General Corporation v. Askew, et al., supra]. An application for a stay of the mandate of the Court of Appeals was denied by both that Court and the United States Supreme Court. At no time during the proceedings in the Federal District Court and the United States Court of Appeals did the Trustees ever assert any obligation on their part to first offer the subject lands for sale to Dade County by virtue of the provisions of Section 253.111, Florida Statutes. Such assertion has not even been made by the Trustees in their pending petition for writ of certiorari in the United States Supreme Court to review the decision of the United States Court of Appeals. The issues of "liability," if any, between the Trustees and Aerojet regarding the subject lands which the county, with the Trustees' cooperation, now seek to have offered to it for purchase have been finally adjudicated between the Trustees and Aerojet and are res judicata. The Trustees cannot relitigate in this proceeding, or in any other proceeding, with Aerojet any issues which were or could have been litigated in the Federal Court action between them which resulted in the specific performance judgment for Aerojet and conveyance of the subject property to it. [Miami Retreat Foundation v. Ervin (Fla. 1952), 62 So.2d 748; Litt v. Tarson (Fla. Appellate 1957), 97 So.2d 46]. Since Aerojet could, under no circumstances, be liable to the Trustees on their Third Party Complaint, Aerojet is not a proper third party defendant, even if a third party action could properly be instituted in this mandamus proceeding.

POINT V

THE CONVEYANCE OF THE SUBJECT LANDS TO AEROJET RENDERS THIS MANDAMUS PROCEEDING AND THE THIRD PARTY COMPLAINT HEREIN MOOT AND ACADEMIC.

The admitted conveyance to Aerojet of the subject lands prior to the filing of the Third Party Complaint by the Trustees moots this mandamus proceeding. This Court has often ruled that a pre-emptory writ will not issue when it is impossible of performance. [Bradenton v. Oliver (Fla. 1934), 153 So. 165; Fieldhouse v. Sewell (Fla. 1936), 171 So. 298; Walker v. Best (Fla. 1935), 163 So. 696]. In Florida ex rel Dixon v. Trustees of the Internal Improvement Fund, supra, the trustees contracted to convey property to one party and then conveyed it to another. Mandamus was brought against the trustees to compel conveyance to the relator:

> "* * * But (the Trustees) have no title to convey. Both the legal and equitable title have gone out to them to Mrs. Titus. There can be no plainer proposition than that they cannot grant what they have not, and of which they have no control. Nothing remains in them to convey * * *. [20 Fla. at page 404]

Similarly, in State v. Milam, supra, this Court said:

> "If the allegations of fact found in the answer where sufficient to show that the respondents cannot legally comply with the mandate of the

> alternative writ * * * then the answer or return is sufficient and a pre-emptory writ of mandamus would not issue to compel * * * an impossible act, or an act which under the law, they cannot perform. [153 So. at page 128].

Here, the Trustees could not under the law abide by the alternative writ of mandamus and cannot in fact abide by pre-emptory writ. They were under the dictates of a Federal Court Judgment to convey the property to Aerojet, which they did under that Court's Order. They could not convey the property to Aerojet and also offer it for sale or convey it to Dade County, and thus, under the law in Milam, they have a complete defense to the alternative writ of mandamus. They cannot, to be sure, alter the fact that the lands have heretofore been conveyed to Aerojet and now rewrite the statutes so as to transfer over to Aerojet the alleged legal duty owed by the Trustees to Dade County.

POINT VI

THIS COURT LACKS JURISDICTION OVER THE PERSON OF AND THERE IS NO PROCESS OR INSUFFICIENT PROCESS AND SERVICE OF PROCESS UPON AEROJET.

It has been heretofore demonstrated that third party practice does not obtain in mandamus proceedings instituted in this Court. It is permitted only in civil actions instituted in the trial courts under the Florida Rules of Civil Procedure.[1] Even if third party practice, however,

[1]Rules 1.010, 1.180.

did obtain in mandamus proceedings instituted in this Court, it is clear that there is a lack of jurisdiction over the person of Aerojet. There has been no summons or process for such Third Party Complaint issued by this Court or by the Clerk thereof, nor any service of any such process upon Aerojet in the manner provided by law or by an officer authorized by law.

The Florida Appellate Rules, under which this mandamus proceeding was filed by Dade County in this Court, makes no provision for the issuance of summons or other process or service thereof upon a so-called third party respondent. If the third party practice provision (Rule. 1.180) of the Florida Rules of Civil Procedure were applicable to a mandamus proceeding in this Court, then the remainder of said rules, including those pertaining to the issuance and service of process, would necessarily be applicable to the Third Party Complaint filed by the Trustees herein. Rule 1.070(a), Florida Rules of Civil Procedure, requires:

> "Upon the commencement of the action summons other other process authorized by law shall be issued forthwith by the clerk or judge and delivered for service without praecipe."

As to service of such summons or other process, Rule 1.070(b) requires same to be made "by any officer authorized by law to serve process."

Rule 1.070(f) requires that at the time of personal service of process "a copy of the initial pleading shall be delivered to the party upon whom service is made."

Sections 48.021 and 48.031, Florida Statutes, provide by whom process must be made and the manner of service. Section 48.021 requires process to "be served by the

sheriff of the county or the constable of the district where the person to be served is found * * *." Section 48.031 provides:

> "Service of original process is made by delivering a copy thereof to the person to be served with a copy of the complaint, petition or other initial pleading or paper or by leaving such copies at his usual place of abode with some person of the family over fifteen years of age and informing such person of their contents. Minors who are or have been married shall be served as provided in this section.

In the instant case, no summons or other process for said Third Party Complaint filed by the Trustees against Aerojet has ever been issued by this Court or by the Clerk thereof. [Rule 1.070, Florida Rules of Civil Procedure]. Accordingly, no summons or other process has ever been served upon Aerojet in any fashion, much less in the manner and by the person required by law. [Sections 48.021, 48.031, Florida Statutes]. The mere mailing of a copy of said Third Party Complaint by counsel for the Trustees to Aerojet, care of The Corporation Company, Jacksonville, Florida, wholly fails to constitute sufficient service of said Third Party Complaint or of any required process so as to confer jurisdiction of this Court over the person of Aerojet.

For these reasons alone, among the others hereinabove set forth, the Third Party Complaint should be dismissed and/or the purported service of a copy thereof by mail upon Aerojet's resident agent quashed.

CONCLUSION

For the reasons and based upon the authorities hereinabove set forth, the purported Third Party Complaint filed herein by the Trustees against Aerojet must be dismissed and/or quashed, and this entire mandamus proceeding should be forthwith dismissed.

Repectfully submitted,

MERSHON, SAWYER, JOHNSTON, DUNWODY & COLE
Attorneys for Third Party Respondent, Aerojet-General Corporation
1600 First National Bank Building
Miami, Florida 33131

By /s/ George W. Wright, Jr.

George W. Wright, Jr., and
Karl B. Block, Jr.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Third Party Respondent, Aerojet-General Corporation, in Support of Motion to Dismiss and/or Quash Third Party Complaint was mailed this 14th day of July, 1972 to ROBERT L. SHEVIN, ESQ., Attorney General, Department of Legal Affairs, The Capitol, Tallahassee, Florida 32304, M. STEPHEN TURNER, ESQ., General Counsel, Board of Trustees, Elliot Building, Tallahassee, Florida 32304 and STUART L. SIMON, ESQ., County Attorney, Dade County Courthouse, Miami, Florida 33130.

GEORGE W. WRIGHT, JR.
Of Counsel

EXHIBIT "A"

STATE OF FLORIDA
BOARD OF TRUSTEES OF THE
INTERNAL IMPROVEMENT TRUST FUND

Elliot Building — Tallahassee, Florida 32304

Joel Kuperberg
Executive Director

Telephone 224-2101

June 26, 1972

Aerojet-General Corporation
c/o The Corporation Company
Thirteenth Floor
Florida Title Building
110 West Forsyth Street
Jacksonville, Florida 32202

State of Florida ex rel
Metropolitan Dade County
vs. Reubin O'D. Askew et
al., vs. Aerojet-General
Corporation - No. 42,461.

Gentlemen:

Pursuant to Rule 3.4b(2)(b), Florida Appellate Rules, you are hereby served with a copy of the attached Third Party Complaint. Written defenses are required to be served within 20 days upon counsel for the Complainants, whose addresses are:

ROBERT L. SHEVIN
Attorney General
Department of Legal Affairs
The Capitol
Tallahassee, Florida 32304

M. STEPHEN TURNER
General Counsel
Board of Trustees
Elliot Building
Tallahassee, Florida 32304

Sincerely,

/s/ M. Stephen Turner
M. Stephen Turner
General Counsel

MST:sm
cc: Alan Dimond, Esquire
George W. Wright, Jr., Esquire

EXCERPT OF MEETING OF METROPOLITAN DADE COUNTY COMMISSION ON JUNE 6, 1972

MR. SIMONS: . . . The second thing I would like to report on involves a proposal that has been put forth to this commission by Mr. Dan Paul, and I think he may have discussed this with you several—

MRS. GOLDBERG: I would like to talk on this, if I may.

You are aware of the current situation regarding Aerojet General, which some have termed a "land steal."

There is a possibility that if we filed a suit of—I don't know the legal term—mandamus, I believe it is—

MR. SIMON: It is mandamus.

MRS. GOLDBERG: —in the Supreme Court of Florida pointing out the Statute 253.111, in which before the trustees of the II Board can sell land they must offer it to the County, we might be able to prevent this particular land, in quotes, "steal," as has been said; and as we know, what has happened up to now is that at the present status they are going to be able to buy that land for some $50 an acre, which is an absurd price, and the taxpayers of this State are the ones who are picking up the tab.

We might be able to get it for the County if we involve ourselves in this kind of a suit, and I believe Mr. Simons has the legal reasons on that matter, and I think it is our duty as representatives of the County to assist in any way to see that our taxes are properly protected and—

MR. SIMONS: Madam, I was not being impertinent — (Inaudible.)

MRS. GOLDBERG: —and I would move that the County Attorney be authorized to proceed in the manner he deems best advisable to do this.

(Inaudible.)

VOICE: Second the motion, Mr. Foreman.

MAYOR CLARK: Any objections, folks?

VOICE: (Inaudible.) How do you feel about this?

MR. SIMONS: I am going to be very candid with my County Commission. I am not going to tell you that I have high hopes for success. You might feel—

VOICE: We know you will try hard.

MR. SIMONS: I certainly will.

MRS. GOLDBERG: What have we got to lose? We might get the land at $50 an acre.

MR. SIMONS: I will tell you this: This much I do know about the situation. The option to purchase the land from the II Fund was given in 1961, and Aerojet General then became entitled to purchase this land for $50 an acre.

We have reason to believe that the land is probably worth in the neighborhood of $5,000 an acre.

VOICE: At least.

MR. SIMONS: It was in 1965 that the Legislature passed the act that Mrs. Goldberg told you about. This was four years after the option was granted to Aerojet General.

VOICE: So that's what it goes back to right there.

MR. SIMONS: And this is the reason I think we are going to have trouble. I don't want to say—

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MRS. GOLDBERG: Well, I know we have fought and won some mighty tough battles, but I would like to point out that the time for exercising of the option is after the law was passed, and that law says when the trustees of the II Board are going to sell land, they must first offer it to the public agencies, and I think we should try everything we can to try and—

MAYOR CLARK: Do you have any further reports?

MR. SIMONS: No, Mr. Mayor.

MAYOR CLARK: Mr. Clerk?

VOICE: We could use a vote to cancel tonight's meeting.

MAYOR CLARK: No way. All right. Reverend Graham? Do you have any reports?

REVEREND GRAHAM: Nothing, thank you.

CERTIFICATE OF NOTARY

STATE OF FLORIDA:
: SS.
COUNTY OF DADE :

I, DORIS MAULDIN, do hereby certify that I transcribed the above-styled hearing, and that the foregoing pages, numbered from 1 through 5, inclusive, constitute a true and correct excerpt of the proceedings at said time and place.

/s/ Doris Mauldin

Notary Public State of Florida at Large
My Commission Expires Mar. 21, 1975
General Insurance Underwriters, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and complete copy of the above and foregoing Supplemental Brief and Appendix of Respondent in Opposition to Supplemental Brief of Petitioners was mailed this 23 day of August, 1972 to ROBERT SHEVIN, Attorney General of the State of Florida, Counsel for the Board of Trustees of the Internal Improvement Trust Fund and Counsel for the Board of Education, Petitioners, The Capitol, Tallahassee, Florida and MARION E. SIBLEY, Special Assistant Attorney General, Appointed to Appear for the Petitioners, 605 Lincoln Road, Miami Beach, Florida 33139.

KARL B. BLOCK, JR.

Of Counsel

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